

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LAWRENCE FAULKENBERRY,

Plaintiff,

V.

CALDWELL COUNTY, TEXAS
CALDWELL COUNTY SHERIFF'S
OFFICE, SERGEANT YOST,
DEPUTY M. TAYLOR,
DEPUTY HOUSETON, AND
CAPTAIN JESSE HERNANDEZ
Defendants.

CIVIL ACTION NO. 1:15-cv-01089

DEFENDANTS' OPPOSED MOTION TO EXCLUDE
THE TESTIMONY OF KEVIN MILLS

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants Caldwell County, Sergeant Yost, Deputy Taylor, Deputy Houseton, and Captain Jesse Hernandez (hereinafter “Defendants”) file this Motion to Exclude the Testimony of Kevin Mills under Federal Rule of Civil Procedure 702. Defendant offers the following:

FACTS

This case arises out of the arrest of Plaintiff, Lawrence Faulkenberry (hereinafter “Plaintiff”), and medical damages he claims to have suffered as a result of that arrest. As part of his claim, Plaintiff designated his accountant, Kevin Mills, CPA, as an expert witness to support his claim for lost wages and business income. Plaintiff owns a motorcycle parts business called Richardson Chop Shop, Inc. Plaintiff acquires and resells motorcycle parts online, on websites such as eBay. Richardson Chop Shop, Inc. is an S corporation (“S-corp”), which is a type of entity where profits and losses can pass through to your personal tax return. As such, Plaintiff is self-employed but enjoys certain tax advantages allowed by S-corps, such as Richardson Chop Shop,

Inc. renting its office (that Plaintiff personally owns) from Plaintiff. Richardson Chop Shop pays Plaintiff a salary and also depreciates assets that are tax advantageous to the Plaintiff. These facts are necessary for the Court to understand the lost wages arguments made by Plaintiff and Kevin Mills, and why those arguments fail.

Undersigned counsel conferred with Plaintiff's counsel, Karl Seelbach, by email on May 3, 2017, concerning this motion pursuant to Local Rule CV-7(i). Mr. Seelbach advised that Plaintiff agrees to not offer Mr. Mills at trial regarding the following: (1) the business value of Richardson Chop Shop, Inc.; (2) injuries Mr. Faulkenberry sustained; and (3) that Mr. Mills has audited Mr. Faulkenberry or his business. Mr. Seelbach stated that Plaintiff was otherwise opposed to this motion.

Therefore, Defendants file his Motion to Exclude Kevin Mills based on the remaining issues about which Mr. Mills will testify.

LEGAL STANDARD

A Court should allow the testimony of an expert witness who is well qualified by knowledge, skill, experience, training or education to render an opinion based on scientific, technical, or other specialized knowledge. Fed. R. Evid. 702. A court should exclude the testimony of an expert if it is not reliable. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 149 (1999); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592-93 (1993). An expert witness may be qualified and highly credible, but his or her conclusions may be based on unreliable methodology. Scientific evidence that is not grounded in the "methods and procedures of science" is no more than "subjective belief or unsupported speculation." *Daubert*, 509 U.S. at 590.

The party offering the expert testimony must establish that it is admissible. *Moore v. Ashland Chem. Co.*, 11 F.3d 269, 276 (5th Cir.1998). Expert testimony is admissible if the

proponent demonstrates that: (1) the expert is qualified; (2) the evidence is relevant to the case; and (3) the evidence is reliable. *Bocanegra v. Vicmar Servs., Inc.*, 320 F.3d 581, 584 (5th Cir.2003). The Court “is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire Co. v. Carmichael*, 526 U.W. 137, 152 (1999). The Court “must ensure the expert uses reliable methods to reach his opinions; and those opinions must be relevant to the facts of the case.” *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir.2004).

“Reliability” requires some objective, independent validation of the expert's methodology. *Moore*, 11 F.3d 269, 276. The expert's assurances that he has utilized generally accepted scientific methodology are insufficient. *Id.* (citing *Daubert v. Merrell-Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1316 (9th Cir.1995) (on remand)). While he need not prove to the court that the expert's testimony is correct, the Plaintiff must prove by a preponderance of the evidence that the testimony is reliable. *Id.* (citing *In re Paoli R.R. Yard PCB Litigation*, 35 F.3d 717 (3d Cir.1994); 2 Stephen A. Saltzburg et al., *Federal Rules of Evidence Manual* 1229-40 (7th ed.1998)).

For the expert’s testimony to be reliable, the following requirements must be met: (1) the testimony must be based on sufficient facts or data, (2) the testimony must be the product of reliable principles and methods, and (3) the expert must apply the principles and methods reliably to the facts of the case. FED. R. EVID. 702 (2010).

The non-exclusive factors that should be considered when evaluating reliability are the following:

- a. whether the expert’s theory can be or has been tested;
- b. whether the theory has been subject to peer review and publication;
- c. the known or potential existence and maintenance of standards and controls;

- d. the existence and maintenance of standards and controls; and
- e. the degree to which the technique or theory has been generally accepted in the scientific community.

Moore 151 F.3d at 275 (citing *Daubert*, 509 U.S. at 593-95).

LIST OF EXHIBITS

Exhibit A: Plaintiff's Designation of Expert Witnesses

Exhibit B: Deposition of Kevin Mills (April 25, 2017)

Exhibit C: Report of Kevin Mills

ARGUMENT

Plaintiff designated Kevin Mills ("Mills") as an expert witness who "will testify concerning the economic impact of the Defendants' conduct on Plaintiff's income and business." Exhibit A, Plaintiff's Designation of Expert Witnesses. On April 25, 2017, Mills was deposed by both Plaintiff and Defendant. According to his deposition testimony, Mills is a Certified Public Accountant and has a bachelor's degree in accounting from Texas State University. Exhibit B, Deposition of Kevin Mills, 6:17-7:16 (April 25, 2017). Defendants file this motion to exclude the testimony of Mills because Mills' opinions are not reliable and are not based on a reliable methodology, are based on unsupported speculation, will not assist the trier of fact, and violate Federal Rule of Civil Procedure 26.

A. Mills' testimony is not reliable and is not based on a reliable methodology

Mills testified that Plaintiff would lose \$570,000 in lost income over 19 years. Exhibit B, 27:13-28:2. The basis for the \$570,000 figure was simple math: \$12,000 per year in lost income that Faulkenberry paid to himself as a salary; plus \$8,000 per year in lost rent that Faulkenberry paid, through his business, to lease his office space; plus \$12,000 per year in lost depreciation

deductions. *Id.* at 28:15-29:8. Mills added those numbers to conclude \$30,000 per year in lost income. Mills testified that, under current Social Security law, Plaintiff could retire at age 67, or 19 years from the present date. *Id.* at 27:3-12. \$30,000 per year, times 19 years, equals \$570,000 (29:9-12)—a “rough estimate” of the Plaintiff’s lost income. *Id.* at 38:8-11; 39:21-24.

However, Mills was not asked to complete a discounted cash flow analysis or to determine the present value of the future lost wages. *Id.* at 41:4-6. *Sheshunoff & Co., Inc. v. Scholl*, 564 S.W.2d 697, 698 (Tex. 1978) (holding that the Plaintiff’s remaining unaccrued salary should have been discounted to its present value at the legal rate of interest); *Culver v. Slater Boat Co.*, 722 F.2d 114, 122 (5th Cir. 1983) (“We hold that fact-finders in this Circuit must adjust damage awards to account for inflation according to the below-market discount rate method.”). Mills stated that it was possible to calculate the present value of \$570,000 using a discounted cash flow analysis, but that was not his area of expertise. Exhibit B, 45:1-46:10; 73:5-15. In fact, the day of his deposition was the first-time Mills was asked to calculate Plaintiff’s projected lost income. *Id.* at 46:11-15. Therefore, this calculation was not part of Mills’ report or his scope of work. *Id.* at 65:3-14. Plaintiff has offered Mills to testify about future lost wages that he will suffer, but did not employ him to do that analysis. *Id.* at 77:13-78:6.

Furthermore, Mills does not use Plaintiff’s individual tax returns to determine his \$570,000 figure, he uses the corporate tax return for Richardson Chop Shop, Inc. *See* Exhibit C; Exhibit B, 27:13-28:2. While Richardson Chop Shop, Inc. is an S-corp with pass through taxation (Exhibit B, 49:8-50:8), it does not include any other income Plaintiff may receive. Exhibit B, 40:6-17. Mills testified about income the Plaintiff lost based on income the Plaintiff’s business lost. *Id.* These are not the same thing.

In his Accountant's Compilation Report dated January 10, 2017, Mills repeatedly circumscribes his scope of work. *See* Exhibit C, at 2. Mills states that:

- He has not audited or reviewed the accompanying State of Income and does not express an opinion or provide any assurance about whether it is in accordance with the income tax basis of accounting.
- He has not undertaken to obtain or provide any assurance that there are no material modifications that should be made to the financial statements.
- That if the omitted disclosures ordinarily included in financial statements were included, they might influence the uses conclusions about the entity's revenues and expenses.
- He is not independent with respect to Richardson Chop Shop, LLC.

Id. By his own disclaimers, Mills states that he does not provide any assurances that his opinions are accurate. *See id.* Asked in his deposition about these statements, Mills stated that he is required to provide these disclaimers unless he performs a full audit. Exhibit B, 57:16-58:1. However, Mills cannot perform a full audit in this case because he is not independent with respect to Richardson Chop Shop. *Id.* at 61:4-19. Mills' testimony is unreliable because his scope of work was limited and, even if he was asked to perform a full audit, he is ethically barred from doing so. *Id.* at 61:20-24.

B. Mills will not assist the trier of fact

Mills assumed in his calculations that Plaintiff will live until he is 67 years old. *Id.* at 42:1-24. However, Mills did not use a work-life actuarial chart. *Id.* Nor did Mills determine whether Mr. Faulkenberry could work at another job for similar or less pay. *Id.* at 42:25-43:4. "It is a basic concept of damages that they must be proved by the party seeking them." *Barto v. Shore Const., L.L.C.*, 801 F.3d 465, 476 (5th Cir. 2015), quoting *Servicios-Expoarma, C.A. v. Indus. Mar. Carriers, Inc.*, 135 F.3d 984, 995 (5th Cir.1998). In this case, Plaintiff has not proven that he will suffer lost wages, nor has he proven what his expected work-life would be; Mills assumes that Plaintiff will live and work until age 67, but he has no data to support that assumption. Exhibit B,

70:1-19. This is not sufficient evidence to support an award of damages for lost income for 19 years. *Barto v. Shore Const., L.L.C.*, 801 F.3d 465, 475 (5th Cir. 2015) (“wanting to work until age 67 is not the only or even the most significant factor in determining whether someone actually will work until age 67”).

Mills also stated that he was not an expert in determining lost wages. Exhibit B, 77:13-78:6. Nor is he an expert in determining business value. *Id.* at 74:7-13. Mills was not asked to determine the business value of Richardson Chop Shop. *Id.* at 75:19-24. Mills does not know the day to day operations of Plaintiffs business. *Id.* at 67:20-68:13. The question remains, what exactly will Mills offer to the jury in this case? If Mills’ expert testimony is to prove-up tax returns, that can be done by affidavit. If Mills’ testimony will be that \$30,000 times 19 years is \$570,000, he is not needed to perform simple math for the jury. Mills should be excluded as a witness because he will not assist the jury in determining any fact at issue in this case. “Rule 702’s ‘helpfulness’ standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.” *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 591–92 (1993). There is no connection between Mills’ expertise and a question of fact in this case.

C. Mills’ testimony violates Federal Rule of Civil Procedure 26

The fact that Plaintiff elicited expert testimony from Mills (Exhibit B, 27:13-28:2) regarding something that was not within Mills’ scope of work (*Id.* at 65:3-14) violates Federal Rule of Civil Procedure 26, which states, in part:

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

- (i) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (ii) the facts or data considered by the witness in forming them;

- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

Fed. R. Civ. P. 26. Plaintiff failed to disclose Mr. Mill's opinions about lost wages, other than to state that Mills "will testify concerning the economic impact of the Defendants' conduct on Plaintiff's income and business." Mills did not disclose his opinion of the total lost wages until his deposition. Exhibit B, 46:11-15. Nowhere in Mills' report does he discuss a lost income figure of \$570,000, nor does he disclose his methodology. *See* Exhibit C, Mills Report. Therefore, Plaintiff violated Rule 26(B)(i) and (ii).

PRAYER

WHEREFORE, Defendants pray that this Court grant this Motion to Exclude Kevin Mills because his report and opinions are unreliable, based on unsupported speculation, and will not assist the trier of fact.

Respectfully submitted,

/s/ Philip B Arnold
J. Eric Magee
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CERTIFICATE OF CONFERENCE

Undersigned counsel conferred with Plaintiff's counsel, Karl Seelbach, by email on May 3, 2017, concerning this motion pursuant to Local Rule CV-7(i). Mr. Seelbach advised that Plaintiff agrees to not offer Mr. Mills at trial regarding the following: (1) the business value of Richardson Chop Shop, Inc.; (2) injuries Mr. Faulkenberry sustained; and (3) that Mr. Mills has audited Mr. Faulkenberry or his business. Mr. Seelbach stated that Plaintiff was otherwise opposed to this motion.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Trek Doyle
Doyle & Seelbach
7500 Rialto Blvd., Bldg. 1, Ste. 250
Austin, Texas 78735
trek@doyleseelbach.com

Malcolm S. Nettles
The Law Offices of Malcolm S. Nettles, P.C.
2909 Riviera Road
Austin, Texas 78733
malcolmn Nettles@gmail.com

Attorneys for Plaintiff

/s/ Philip B Arnold
Philip B. Arnold

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LAWRENCE FAULKENBERRY

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V.

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CAUSE NO. 1:15-cv-01089-SS

CALDWELL COUNTY, TEXAS

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CALDWELL COUNTY SHERIFF'S

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OFFICE, SERGEANT YOST,

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DEPUTY M. TAYLOR, AND

§

DEPUTY HOUSESTON.

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PLAINTIFF'S DESIGNATION OF EXPERT WITNESSES

Pursuant to Federal Rule of Civil Procedure 26(a)(2) and the Court's Joint Scheduling Order of March 14, 2016, Plaintiff designates witnesses as follows:

I. RETAINED EXPERTS

Pursuant to Rule 26(a)(2)(B), Plaintiff designates the following retained experts:

<u>NAME</u>	<u>EXPERT TESTIMONY</u>
Dr. George Kirkham Dr. George Kirkham and Associates, Inc. 1402 James Bay Rd. Palm Beach Gardens, FL 33410 800.488.9231 Gkirkham@krimedr.com	Dr. Kirkham will testify that the Defendants are liable to Plaintiff for using excessive force, conducting an illegal search, and prosecuting baseless charges as alleged in Plaintiff's First Amended Complaint. Plaintiff produces Dr. Kirkham's written report and other materials as bates numbers Faulkenberry 000590 - 621. Dr. Kirkham's materials contain the information responsive to Rule 26(a)(2)(B)(i)-(vi). Plaintiff and Dr. Kirkham reserve the right to supplement his report as discovery in this matter is ongoing.

Kevin Mills, CPA 1015-A West San Antonio St. Lockhart, TX 78644 512.376.421	Mr. Mills is a CPA and the accountant for Mr. Faulkenberry and his business. Mr. Mills will testify concerning the economic impact of the Defendants' conduct on Plaintiff's income and business. Plaintiff produces Mr. Mills' written report and other materials as bates numbers Faulkenberry 000575 - 000589. Mr. Mills' materials contain the information responsive to Rule 26(a)(2)(B)(i)-(vi). Plaintiff and Mr. Mills reserve the right to supplement his report as discovery in this matter is ongoing.
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II. NON-RETAINED EXPERTS

Pursuant to Rule 26(a)(2)(C), Plaintiff designates the following non-retained experts:

<u>NAME</u>	<u>SUBJECTS OF POSSIBLE DISCOVERABLE INFORMATION</u>
Trek Doyle trek@doyleseelbach.com Doyle & Seelbach PLLC 7500 Rialto Blvd., Building 1, Suite 250 Austin, Texas 78735 512.480.4892	Trek Doyle will testify regarding the amount, reasonableness, and necessity of attorneys' fees. Redacted time entries supporting Plaintiff's claim of attorney's fees have been produced to Defendants. Defendants are referred to those materials for additional information concerning the attorney's fees incurred to date. As of this filing, Plaintiff's reasonable attorney's fees, as calculated pursuant to the lodestar method approved by the federal courts, exceed \$140,000. Plaintiff's reasonable attorney's fees continue to grow and Plaintiff will supplement.

<p>Karl Seelbach karl@doyleseelbach.com Doyle & Seelbach PLLC 7500 Rialto Blvd., Building 1, Suite 250 Austin, Texas 78735 512.480.4892</p>	<p>Karl Seelbach will testify regarding the amount, reasonableness, and necessity of attorneys' fees. Redacted time entries supporting Plaintiff's claim of attorney's fees have been produced to Defendants. Defendants are referred to those materials for additional information concerning the attorney's fees incurred to date. As of this filing, Plaintiff's reasonable attorney's fees, as calculated pursuant to the lodestar method approved by the federal courts, exceed \$140,000. Plaintiff's reasonable attorney's fees continue to grow and Plaintiff will supplement.</p>
<p>Malcolm Nettles Law Office of Malcolm S. Nettles, P.C. 2909 Riviera Road Austin, Texas 78733 512.472.7578</p>	<p>Malcolm Nettles will testify regarding the amount, reasonableness, and necessity of attorneys' fees. Redacted time entries supporting Plaintiff's claim of attorney's fees have been produced to Defendants. Defendants are referred to those materials for additional information concerning the attorney's fees incurred to date. As of this filing, Plaintiff's reasonable attorney's fees, as calculated pursuant to the lodestar method approved by the federal courts, exceed \$140,000. Plaintiff's reasonable attorney's fees continue to grow and Plaintiff will supplement. In addition, Mr. Nettles represented Plaintiff in connection with the false charges brought against him by Defendants and has knowledge of Plaintiff's wrongful arrest and incarceration. Mr. Nettles can also authenticate the video of events at issue in this lawsuit.</p>

<p>Sergeant Dustin Yost c/o J. Eric Magee ALLISON, BASS and MAGEE, LLP 402 W. 12th Street Austin, TX 78701 512.482.0701 Telephone 512.480.0902 Fax e.magee@allison-bass.com</p>	<p>To the extent his testimony may be considered opinion testimony admissible pursuant to Federal Rule of Evidence 702, Plaintiff designates Sergeant Yost as a non-retained expert. Sergeant Yost claims to be a trained member of law enforcement and is employed by the Caldwell County Sheriff's Office as a Sergeant. Sergeant Yost has been deposed in this matter and Defendants are referred to his deposition and the exhibits attached thereto for additional information. With this designation, Plaintiff does not express agreement with Sergeant Yost's testimony, including his opinions, and reserves the right to object to some or all of his testimony and opinions.</p>
<p>Deputy Michael Taylor c/o J. Eric Magee ALLISON, BASS and MAGEE, LLP 402 W. 12th Street Austin, TX 78701 512.482.0701 Telephone 512.480.0902 Fax e.magee@allison-bass.com</p>	<p>To the extent his testimony may be considered opinion testimony admissible pursuant to Federal Rule of Evidence 702, Plaintiff designates Deputy Taylor as a non-retained expert. Deputy Taylor claims to be a trained member of law enforcement and is employed by the Caldwell County Sheriff's Office as a Deputy. Deputy Taylor has been deposed in this matter and Defendants are referred to his deposition and the exhibits attached thereto for additional information. With this designation, Plaintiff does not express agreement with Deputy Taylor's testimony, including his opinions, and reserves the right to object to some or all of his testimony and opinions.</p>

<p>Deputy Galen Houseston c/o J. Eric Magee ALLISON, BASS and MAGEE, LLP 402 W. 12th Street Austin, TX 78701 512.482.0701 Telephone 512.480.0902 Fax e.magee@allison-bass.com</p>	<p>To the extent his testimony may be considered opinion testimony admissible pursuant to Federal Rule of Evidence 702, Plaintiff designates Deputy Houseston as a non-retained expert. Deputy Houseston is ostensibly a trained member of law enforcement and is employed by the Caldwell County Sheriff's Office as a Deputy. Deputy Houseston has not yet been but will be deposed in this matter. Defendants are referred to his deposition and the exhibits attached thereto for additional information. With this designation, Plaintiff does not express agreement with Deputy Houseston's testimony, including his opinions, and reserves the right to object to some or all of his testimony and opinions.</p>
<p>Captain Jesse Hernandez c/o J. Eric Magee ALLISON, BASS and MAGEE, LLP 402 W. 12th Street Austin, TX 78701 512.482.0701 Telephone 512.480.0902 Fax e.magee@allison-bass.com</p>	<p>To the extent his testimony may be considered opinion testimony admissible pursuant to Federal Rule of Evidence 702, Plaintiff designates Captain Hernandez as a non-retained expert. Captain Hernandez claims to be a trained member of law enforcement and is employed by the Caldwell County Sheriff's Office as a Captain. Captain Hernandez has been deposed in this matter and Defendants are referred to his deposition and the exhibits attached thereto for additional information. With this designation, Plaintiff does not express agreement with Captain Hernandez's testimony, including his opinions, and reserves the right to object to some or all of his testimony and opinions.</p>

<p>Fred Weber District Attorney Caldwell County c/o J. Eric Magee ALLISON, BASS and MAGEE, LLP 402 W. 12th Street Austin, TX 78701 512.482.0701 Telephone 512.480.0902 Fax e.magee@allison-bass.com</p>	<p>Mr. Weber is the District Attorney of Caldwell County. He declined to prosecute Plaintiff for the fabricated charges brought by Defendants. To the extent his testimony may be considered opinion testimony admissible pursuant to Federal Rule of Evidence 702, Plaintiff designates Mr. Weber as a non-retained expert.</p>
<p>Dr. Robert Josey and staff Orthopedic Specialists of Austin Austin Office 4611 Guadalupe St Ste 200 Austin, TX 78751 512.476.2830</p> <p>Texas Spine Consultants, P.A. 715 Discovery Blvd. Suite 102 Cedar Park, TX 78613</p> <p>Hyde Park Surgery Center 4611 Guadalupe Street Austin, TX 78751</p> <p>Westlake Hospital 5656 Bee Cave Road West Lake Hills, TX 78746 (512) 327-0000</p>	<p>Dr. Josey has provided medical treatment necessitated by the conduct of Defendants. Dr. Josey will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Josey will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Josey's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Carlos Perez, M.D. Texas Spine Consultants, P.A. 715 Discovery Blvd. Suite 102 Cedar Park, TX 78613</p> <p>Orthopedic Specialists of Austin Austin Office 4611 Guadalupe St Ste 200 Austin, TX 78751 512.476.2830</p>	<p>Dr. Perez has provided medical treatment necessitated by the conduct of Defendants. Dr. Perez will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Perez will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Perez's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>

<p>Gregg Vagner, M.D. Orthopedic Specialists of Austin Austin Office 4611 Guadalupe St Ste 200 Austin, TX 78751 512.476.2830</p>	<p>Dr. Vagner has provided medical treatment necessitated by the conduct of Defendants. Dr. Vagner will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Vagner will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Vagner's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Andrew Ebert, M.D Texas Spine Consultants, P.A. 715 Discovery Blvd. Suite 102 Cedar Park, TX 78613</p>	<p>Dr. Ebert has provided medical treatment necessitated by the conduct of Defendants. Dr. Ebert will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Ebert will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Ebert's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Juan Davila, M.D. Seton Healthcare Family 300 S Colorado St Lockhart, TX 78644-2707 512.376.9690</p>	<p>Dr. Davila has provided medical treatment necessitated by the conduct of Defendants. Dr. Davila will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Davila will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Davila's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>

<p>Dr. Jeffrey Fluitt, Alicia Poche, PT and Alyssa Templain, PTA other providers Austin Preferred Integrative Medicine 4316 James Casey St., Bldg. B, #201 Austin, Texas 78745 512.442.2727</p>	<p>Dr. Fluitt and other providers, including physical therapists Alicia Poche and Alyssa Templain and others have provided medical treatment necessitated by the conduct of Defendants. Dr. Fluitt will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Fluitt will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Fluitt's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Dr. James Smith Jr., MD Texas Orthopedics 4700 Seton Center Parkway, Ste. 200 Austin, Texas 78759 512.439.1002</p> <p>Leah Wakefield Patient Collection Manager</p>	<p>Dr. Smith has provided medical treatment necessitated by the conduct of Defendants. Dr. Smith or Leah Wakefield will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Smith will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Smith's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Roxanne Ramirez, LPC Intern Therapy Austin 1415 West 51st Street, Unit 1 Austin, Texas 78756 512.201.4501</p>	<p>Ms. Ramirez has provided psychological and emotional counseling services to Plaintiff pertaining to the incident at issue. Ms. Ramirez will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment she provided. Ms. Ramirez will testify that Defendants' conduct caused Plaintiff's need for medical treatment.</p>

<p>Jerel Wottrich, DC First Chiropractic 2121 W. Oltorf St. Austin, Texas 78741 512.201.2567</p> <p>Nora Martinez Medical Assistant</p>	<p>Dr. Wottrich has provided medical treatment necessitated by the conduct of Defendants. Dr. Wottrich or Nora Martinez will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Wottrich will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Wottrich's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Don Perez, DC First Chiropractic 2121 W. Oltorf St. Austin, Texas 78741 512.201.2567</p> <p>Nora Martinez Medical Assistant</p>	<p>Dr. Perez has provided medical treatment necessitated by the conduct of Defendants. Dr. Perez or Nora Martinez will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Perez will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Perez's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Dr. Edward C. Fritsch River Ranch Radiology 711 W. 38th Street, Suite B-7 Austin, Texas 78705 512.454.9597</p> <p>Eva Hernandez Health Information Coordinator</p>	<p>Dr. Fritsch and River Ranch Radiology have provided medical treatment necessitated by the conduct of Defendants. Dr. Fritsch or Eva Hernandez will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment provided. Dr. Fritsch will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Fritsch's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>

<p>Debbie Frizzell Insurance Billing Specialist City of Lockhart EMS 214 Bufkin Lane Lockhart, Texas 78644 512.398.7320</p>	<p>The City of Lockhart EMS provided medical treatment necessitated by the conduct of Defendants. Its records have been produced. They contain the details of Plaintiff's treatment and a summary of any pertinent expert opinions relating to same. Ms. Frizzell will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment provided.</p>
<p>Clyde Houston, OD Master Eye Associates 9600 S. I-35, Suite 225A Austin, Texas 78748 512.290.0876</p>	<p>Dr. Houston and Master Eye Associates have provided medical treatment necessitated by the conduct of Defendants. Dr. Houston will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment he provided. Dr. Houston will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Dr. Houston's records to date have been provided to Defendants and contain the details of his treatment and a summary of his opinions.</p>
<p>Linda Stevens Custodian of Records Visionworks 9600 S I-35 Austin, Texas 78748 210.245.2200</p>	<p>Visionworks has provided medical treatment necessitated by the conduct of Defendants. Ms. Stevens will testify as to the reasonableness of the fees charged as well as the medical necessity of the treatment provided. The representative will testify that Defendants' conduct caused Plaintiff's need for medical treatment. Visionworks' records to date have been provided to Defendants and contain the details of his treatment and a summary of any pertinent opinions.</p>
<p>Deborah L. Lukhard Custodian of Records HMR Funding, LLC 2900 Polo Parkway, Suite 200 Midlothian, VA 23113</p>	<p>Ms. Lukhard is the custodian of records for HMR Funding and will testify as to the reasonableness and necessity of the treatment provided to Plaintiff.</p>

Plaintiff reserves the right to supplement these designations in accordance with the Federal Rules of Civil Procedure as discovery is ongoing. Plaintiff also cross-designates Defendants' designated experts, if any, as Plaintiff's expert witnesses and reserves the right to call such expert(s) as a witness at trial even if Defendants later attempt to de-designate said expert(s). Additionally, to the extent Defendants have not timely produced pertinent information or discovery responses in this lawsuit, Plaintiff reserves the right to designate additional expert witnesses, including rebuttal experts, at a later date if and when such information is produced and/or if Defendants intend to rely on such information at trial.

Respectfully submitted,

By: /s/ **Trek Doyle**
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ATTORNEYS FOR PLAINTIFF

 Doyle & Seelbach

CERTIFICATE OF SERVICE

By my signature above, I certify that a true and correct copy of this pleading was forwarded by facsimile and electronic mail on the 13th day of January, 2017 to:

J. Eric Magee
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ATTORNEY FOR DEFENDANTS

EXHIBIT B

In the Matter Of:

FAULKENBERRY vs CALDWELL COUNTY

1:15-CV-01089-SS

KEVIN MILLS, CPA

April 25, 2017



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KEVIN MILLS, CPA
 FAULKENBERRY vs CALDWELL COUNTY

April 25, 2017

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UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION

LAWRENCE FAULKENBERRY,)
 Plaintiff,)
 vs.) 1:15-CV-01089-SS
 CALDWELL COUNTY, TEXAS;)
 CALDWELL COUNTY SHERIFF'S)
 OFFICE; CAPTAIN JESSE)
 HERNANDEZ; SERGEANT YOST;)
 DEPUTY M. TAYLOR; and DEPUTY)
 HOUSESTON,)
 Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF
 KEVIN MILLS, CPA
 April 25, 2017

ORAL AND VIDEOTAPED DEPOSITION OF
 KEVIN MILLS, CPA, produced as a witness at the
 instance of the Plaintiff and duly sworn,
 was taken in the above-styled and numbered
 cause on April 25, 2017, from 10:12 a.m. to
 11:37 a.m., before KATRINA FAITH WRIGHT, Certified
 Shorthand Reporter in and for the State of Texas,
 reported by machine shorthand, at 7500 Rialto
 Boulevard, Building I, Suite 250, Austin, Texas
 78735, pursuant to the Federal Rules of Civil
 Procedure and the provisions stated on the record
 or attached hereto.

KEVIN MILLS, CPA
FAULKENBERRY vs CALDWELL COUNTY

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APPEARANCES

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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512-482-0701
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1 STIPULATIONS

2
3 The attorneys for all parties present
4 stipulate and agree to the following items:
5

6 That the deposition of KEVIN MILLS, CPA is
7 being taken pursuant to Notice;
8

9 That the deposition is being taken pursuant
10 to the Federal Rules of Civil Procedure;
11

12 That the original transcript will be
13 submitted Mr. Karl Seelbach;
14

15 That signature to the deposition transcript
16 was reserved;
17

18 That the witness or the Plaintiff's attorney
19 will return the signed transcript to the court
20 reporter within 30 days of the date the transcript
21 is provided to the Plaintiff's attorney. If not
22 returned, the witness may be deemed to have waived
23 the right to make the changes, and an unsigned copy
24 may be used as though signed.
25

KEVIN MILLS, CPA
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I N D E X

WITNESS	EXAMINATION
KEVIN MILLS	
By Mr. Seelbach	5
By Mr. Arnold	31

E X H I B I T S

EXHIBIT NUMBERS	PAGE MARKED FOR ID
Exhibit 27	5
Documents Bates-stamped Faulkenberry 000575-000589	
Exhibit 28	
S Corporation Five Year Tax History	5

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(Exhibit Nos. 27 and 28 premarked.)

THE VIDEOGRAPHER: This is Disk 1 to the video deposition of Kevin Mills in the matter of Lawrence Faulkenberry versus Caldwell County Texas, et al, being heard before the United States District Court for the Western District of Texas, Austin Division. The cause number is 1:15-CV-01089-SS. This deposition is being held in Austin, Texas, on April 25th, 2017, and the time is 10:12 a.m.

Will counsel, please, identify themselves for the record, after which the court reporter will swear in the witness.

MR. SEELBACH: Karl Seelbach for the Plaintiff, Lawrence Faulkenberry.

MR. ARNOLD: Philip Arnold for the Defendants.

KEVIN MILLS, CPA,
having been first duly sworn, testified as follows:

EXAMINATION

Q. (Question By Mr. Seelbach) Mr. Mills, would you please state your full name for the record.

A. My name is Kevin Mills.

Q. And where do you live?

A. In Lockhart, Texas.

KEVIN MILLS, CPA
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1 Q. And do you have any family there in
2 Lockhart?

3 A. I have a wife and two daughters.

4 Q. How old are your kiddos?

5 A. Twenty-one and sixteen.

6 Q. All right. Where did you go to
7 high school, Mr. Mills?

8 A. Elgin High School, about 30 miles
9 southeast of Austin.

10 Q. And what year did you graduate from
11 high school?

12 A. 1986.

13 Q. And following high school, did you go
14 directly to college or work a little bit?

15 A. Went directly to college.

16 Q. And where was that?

17 A. It was at Southwest Texas State, which
18 is now Texas State University.

19 Q. And is that in San Marcos, Texas?

20 A. San Marcos, Texas.

21 Q. And what was your undergraduate training
22 in?

23 A. In accounting.

24 Q. And did you get a bachelor's degree in
25 accounting?

1 A. Bachelor's degree in accounting and then
2 sat for the CPA exam after that.

3 Q. And can you explain to the ladies and
4 gentlemen of the jury kind of how that works. You
5 get your bachelor's degree, and then you have to do
6 a little something extra?

7 A. You have your bachelor's degree, and
8 then at that point, you had to have two years of
9 experience working under a CPA, and I worked at a
10 savings and loan under a CPA for a number of years
11 before that, and then you sit for the CPA exam,
12 which is a four-part -- at that point, was a
13 four-part exam over multiple days, so it's a
14 rigorous exam.

15 Q. And you ultimately passed that exam?

16 A. Yes.

17 Q. And during your training -- describe to
18 me, you know, what type of training did you get as
19 far as was it tax returns or preparing income
20 statements? Give me -- give me a flavor what type
21 of training.

22 A. It's a mixture of all of those. You
23 know, financial statements was part of it. Tax
24 returns would be a part of it, your basic, you
25 know, beginning and intermediate accounting, the

1 debits and the credits of it all. It's a broad
2 coverage. And then I'd also worked in the industry
3 prior to 2008 in various roles, so I have a pretty
4 broad background in accounting.

5 Q. Would you agree that you were trained in
6 calculating past and future lost profits during
7 that time frame?

8 A. Yes.

9 Q. And is one method of calculating lost
10 profits the before-and-after method?

11 A. Yes.

12 Q. What does that mean, the
13 before-and-after method?

14 A. Well, you're going to look at the trend
15 before from a financial statement standpoint or a
16 profit and loss standpoint and then see what
17 happened to that trend after a certain event or a
18 certain time period.

19 Q. Okay. Give me just a quick list of your
20 job experience post college, after college. Where
21 all have you worked since then?

22 A. Worked through college at a savings and
23 loan business taken over by the Resolution Trust
24 Corp. back in the 80s during the S&L crisis, stayed
25 there for a while. Briefly worked at the State.

1 Been an accounting manager at a real estate company
2 in downtown Austin years back, and then went to
3 Whole Foods Market and kind of transitioned into
4 systems, if you will, but always had the accounting
5 duties during that time period because I was a CPA,
6 worked at a semiconductor company, and then went
7 into -- opened an office part-time in 2002 and went
8 into it full-time in 2008 from a CPA standpoint.

9 Q. And just so we're specific and the
10 record is clear on this, can you just kind of give
11 me a list of the names of those companies and then
12 roughly what years you worked for them?

13 A. Yeah. The last company I worked at was
14 Zarlink, and that was from 2002 to 2009. It was
15 formerly called Legerity, and it was a
16 semiconductor company that changed ownership a
17 couple of times. It was actually an AMD spinoff.

18 Q. And what was your role at that company

19 A. I was a systems analyst, did the cost
20 accounting from a systems standpoint and then
21 eventually took over and ran kind of the inventory
22 control group. We tracked variances from product
23 that we built offshore through data feeds, and we
24 had very detailed tracking of yield lost -- yield
25 loss and what we paid the vendor for each step that

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1 they performed on the product.

2 Q. What about immediately before that? Did
3 you say it was Whole Foods?

4 A. I worked at Whole Foods Market from '97
5 to 2000. I was also on their accounting systems
6 team initially and then their warehouse systems
7 team.

8 Q. And what did your job duties encompass
9 in those two roles?

10 A. It was interacting with users and
11 looking at the software and configuring it. It was
12 on a legacy system that we rolled into a PeopleSoft
13 project. We were replacing the warehouse systems
14 with the best read application and also replacing
15 the financial system with PeopleSoft, so I kind of
16 interfaced between the warehouse and accounting
17 system at that point.

18 Q. And then before that, was that your job
19 at the savings and loan company?

20 A. No. I was -- before that I was at an
21 accounting -- a real estate company in downtown
22 Austin for a couple years. It was called Ultra,
23 Inc.

24 Q. And what were you doing?

25 A. They service distressed mortgage

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1 portfolios for large companies out of New York.

2 Q. Okay. And then how many years now have
3 you been running your own business?

4 A. I've been practicing -- I've had an
5 office open since 2002, like I said, part-time from
6 2002 to 2008; full-time from 2008 to present.

7 Q. And describe to me what services your
8 company offers.

9 A. We do a lot of tax returns, a lot of
10 financial statements, a lot of QuickBooks
11 consulting, sales tax, payroll. We kind of do
12 everything and kind of target a small business that
13 needs payroll, accounting services, and maybe
14 QuickBooks support.

15 Q. Do you have any employees?

16 A. I have two full-time employees and two
17 part-time employees.

18 Q. How long have you worked with Larry
19 Faulkenberry?

20 A. Probably between seven and eight or nine
21 years, somewhere in that time frame.

22 Q. And how many years have you worked with
23 Richardson Chop Shop?

24 A. Probably the same time frame.

25 Q. And just for the jury's sake, who is

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1 Richardson Chop Shop, or what is Richardson Chop
2 Shop?

3 A. It's an S corp -- it's an LLC taxed as
4 an S corp that Lawrence Faulkenberry is the sole
5 member of.

6 Q. Mr. Mills, I'm going to hand you what's
7 been marked as Exhibit No. 27.

8 MR. SEELBACH: And I'll state for the record
9 that this is Mr. Mills' expert report Bates labeled
10 Faulkenberry 0000575 through 0000589 that was
11 previously produced in this case.

12 Q. (By Mr. Seelbach) Mr. Mills, is this a
13 true and correct copy of your expert report in the
14 pending lawsuit?

15 A. Yes.

16 Q. And in preparing those documents, what
17 did you review to reach your opinions and fill out
18 that -- those documents? What type of information
19 did you review?

20 A. It was income and expense information
21 prepared the 2013 through 2015 tax years and then
22 information provided by Mr. Faulkenberry for 2016,
23 and subsequently, did a tax return that would match
24 the 2016 P&L.

25 Q. Okay. And would you agree with me that

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1 your report regarding Mr. Faulkenberry and his
2 business, Richardson Chop Shop, is to a reasonable
3 degree of accounting certainty?

4 A. Yes.

5 Q. Would you agree with me today that all
6 your opinions regarding Mr. Faulkenberry and
7 Richardson Chop Shop are to a reasonable degree of
8 accounting certainty?

9 A. Yes.

10 Q. What's your understanding as of
11 January 2015, January 15th, 2015, to be exact, of
12 the ownership of Richardson Chop Shop as far as who
13 owned it?

14 A. Lawrence Faulkenberry was the sole
15 member of that LLC.

16 Q. And could you tell the jury a little
17 about the nature of Richardson Chop Shop's
18 business? What did they do?

19 A. Yeah. Basically, bought motorcycles or
20 motorcycle parts in bulk across the country and
21 would strip the product down, if you will, and part
22 it out and sell it as individual parts through an
23 online store, through eBay, I believe.

24 Q. And other than Richardson Chop Shop, do
25 you have any other customers in that industry?

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1 A. I do.

2 Q. Approximately how many?

3 A. Approximately four other customers in
4 that industry.

5 Q. And what's your understanding of how
6 Richardson Chop Shop acquired the inventory and who
7 did that?

8 A. Larry would travel and buy, like I said,
9 shops going out of business or buy it in bulk and
10 that -- that happened, from my understanding,
11 throughout the country. I don't think there is --
12 I don't think there is a tremendous amount of
13 motorcycle parts shops in the Lockhart area, so
14 there was extensive travel, and, again, they bought
15 it in bulk, shipped it back, and stripped it -- I
16 don't want to say stripped it down, but parted it
17 out, if you will.

18 Q. And do you know one way or another who
19 Richardson Chop Shop's target customers were when
20 it was selling those products?

21 A. I think it was just guys looking for
22 parts for old bikes across the country and even
23 globally, I think.

24 Q. So that could be an individual consumer
25 that has a motorcycle in his home garage or a

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1 motorcycle shop that is doing repairs?

2 A. Could be either one. I thought it was
3 more tailored toward the individual, but I could be
4 wrong on that.

5 Q. What is a comparative income statement?

6 A. It's taking a multiyear -- multiple
7 years of the P&L or the income statement and
8 comparing it year by year.

9 Q. And describe to me, in Exhibit 27, the
10 comparative income statement that you prepared in
11 this case. And specifically, I want to look at two
12 time frames. I want you to talk about, first, the
13 performance of Richardson Chop Shop prior to
14 January of 2015, and I want to give you one more
15 document in connection with that analysis.

16 I'm handing you what has been marked
17 Exhibit 28. This document's Bates labeled
18 Faulkenberry 0000311. It was previously produced
19 in connection with Plaintiff's document production,
20 if you want to glance at it. This is my copy. It
21 just goes a couple of more years.

22 A. This comes from my tax software.

23 Q. And I appreciate that. So is this a true
24 and correct copy of an excerpt from a tax-related
25 document that you prepared for Richardson Chop

1 Shop, LLC?

2 A. Yes.

3 Q. Okay. And so looking at the comparative
4 income statement and the five-year tax history
5 document that I just handed you side by side, can
6 you explain to me what your assessment is of
7 Richardson Chop Shop's performance prior to January
8 of 2015? Talk to me a little bit about what you
9 see in the numbers.

10 A. Well, it's a pretty steady income
11 number. It's between 170 and 186 over a four-year
12 period, and then in 2015 dropped, in 2016 dropped
13 even more so --

14 Q. Just so the record's clear -- and I'm
15 sorry to interrupt, but if you'll use whole
16 numbers.

17 A. Sure.

18 Q. I realize when you say 170, you mean
19 170,000, but just so the record's clear, if you'll
20 state the complete number and not just --

21 A. Yeah. Between 2011 and 2014, it
22 averaged between 171,000 and 186,000, and it
23 dropped to 144,792 in 2015, the revenue dropped,
24 and then dropped to 90,912 in 2016. You'll also
25 see a corresponding drop in the inventory numbers,

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1 and I talked with Lawrence about this at one of our
2 meetings.

3 We would meet two to three times a year,
4 probably, and that there wasn't enough product
5 being purchased to generate the sales at a level
6 that they were historically at. And, you know, in
7 my dealings with small businesses, you have to have
8 inventory to replenish what you're selling to be
9 able to have future sales, so that just didn't
10 happen between 2015 and the end of 2016.

11 Q. Okay. Give me just a moment. So you
12 mentioned a lack of inventory or certainly a drop
13 in inventory in 2015 and '16. What is your
14 understanding of what caused that?

15 A. The inability of Mr. Faulkenberry to
16 travel. Like I said, the trips were long trips or
17 not short trips, out of state trips, and I
18 know that he would -- occasionally, he would fly,
19 and I think they drove -- or would drive some stuff
20 back, so due to his injury, he was unable to
21 travel. And when we say "inventory," I mean
22 specifically new purchases of product.

23 Q. And what is your understanding of what
24 caused Larry Faulkenberry's back injury?

25 A. My understanding was -- was indirect

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1 relation to an accident sustained in an incident at
2 his home with one of the local law enforcement
3 agencies.

4 Q. And can you tell me any more than that
5 as far as what caused his injury?

6 A. I believe there was a -- that he was
7 taken to the ground quickly, unexpectedly, maybe,
8 and injured some part of his back.

9 Q. And I realize you're not a doctor --

10 A. Yeah.

11 Q. -- and you're not testifying about
12 medical stuff, but as a layperson, what is your
13 understanding of the restrictions that caused on
14 Larry's physical abilities in running his business?

15 MR. ARNOLD: Objection, form to the -- calls
16 for speculation.

17 Go ahead.

18 Q. (By Mr. Seelbach) What has Larry told
19 you?

20 A. That he was unable to travel and buy
21 more inventory due to the injury.

22 Q. And are you aware one way or another of
23 any limitation in his ability to -- to lift any of
24 this inventory?

25 A. Of course, with a back injury -- and I'm

1 no doctor, but I have had one back injury in my
2 lifetime years back, but, you know, range of motion
3 is an issue, probably, the ability to lift, the --
4 again, you're parting out a bike, so you're having
5 to take something heavy and separate it out into
6 small, individual pieces, so I imagine that would
7 be affected. You know, when you have -- you're
8 probably warehousing that and shelving it, so
9 you're probably lifting to put it up on a shelf.

10 So there are a range of things that
11 would be affected, but I think, primarily, you have
12 to have the inventory to part out and put on a
13 shelf, and when you can't buy that, the rest of it
14 just falls by the wayside, if you will.

15 Q. And let me focus back in on your
16 expertise, the accounting. In your opinion as an
17 accountant, did the incident that occurred
18 January 15th of 2015 proximately cause the decline
19 in Larry Faulkenberry's business?

20 A. Yes.

21 MR. ARNOLD: Objection, calls for a legal
22 conclusion.

23 Q. (By Mr. Seelbach) In your opinion, did
24 the incident that occurred January 15th of 2015
25 proximately cause Richardson Chop Shop's lost

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1 profits from 2015 to the present?

2 MR. ARNOLD: Objection.

3 Q. (By Mr. Seelbach) You can answer.

4 A. Yes.

5 Q. And I understand that -- well, let me
6 ask you this. You mentioned earlier in your
7 testimony that you had some other clients --

8 A. Uh-huh.

9 Q. -- in a similar industry. Did you
10 consider any other potential causes for the decline
11 in Mr. Faulkenberry's business?

12 A. Yeah. You have to look at the market
13 and the market space they're in, and having some
14 other clients in that space, I didn't see similar
15 results for those clients. Those clients, on
16 average, were probably up from prior years versus
17 being down close to 50 percent in sales.

18 Q. And so is it fair to say that you're not
19 aware of any other potential causes for the decline
20 in Mr. Faulkenberry's business?

21 A. Not that I'm aware of.

22 Q. I understand that Mr. Faulkenberry
23 acquired some debt in 20 -- I believe it was late
24 in '15 and early '16. Without getting into all of
25 the specifics about that debt, can you tell me just

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1 a little bit about what you know about the debt and
2 how that impacted the business?

3 A. Yeah. I know there was a significant
4 amount of debt. I don't know the exact number
5 taken on, and it almost seemed to be what I would
6 call predatory lending that was kind of
7 emergency-based, if you will.

8 Q. Did Mr. Faulkenberry explain to you why
9 he needed that?

10 A. He needed it to try and keep the
11 business running was the explanation. And, again,
12 I don't know the exact amount, but it was something
13 that he did not have in prior years. It was pretty
14 much a cash -- self-funded, if you will.

15 Q. And are there any fees or expenses
16 reflected in your comparative income statement that
17 indicate loans were taken out?

18 A. Yeah. There are a significant amount of
19 loan fees that was -- that's why I say predatory
20 lending. There was an enormous amount paid upfront
21 to be able to obtain the loan, and I think that it
22 was one of those loans that it was paid back
23 through a daily deduction from PayPal, which is
24 what processed the eBay transactions, so I believe
25 it was directly paid back, so that immediately

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1 affects your cash flow on a daily basis.

2 Q. And this may or may not be the first
3 time we talked about eBay. Can you explain to the
4 jury why you're bringing up eBay and how that fits
5 into Mr. Faulkenberry's business?

6 A. Well, you have a traditional brick and
7 mortar store, and I dealt with this when I worked
8 at Whole Foods. It was -- online grocery was a big
9 thing at that point. You have brick and mortar
10 which is your storefront, but you have other
11 clients who have no storefront presence. You can't
12 walk in the door and buy it. You buy it on eBay.

13 Well, I buy all my toner for the office
14 on eBay. You don't go pick it out. You buy it on
15 eBay, pay through PayPal, and they ship it to you.
16 And, you know, there's probably not a market in
17 Lockhart, Texas, for a brick and mortar motorcycle
18 parts store, but if you open it up worldwide
19 through eBay, there's plenty of demand for it.

20 Q. And so in reviewing Mr. Faulkenberry's
21 records and preparing his tax returns for both
22 himself and the business over the years, you came
23 to understand that he utilized eBay as a storefront
24 for his business?

25 A. Correct.

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1 Q. Okay. I just wanted you to explain the
2 connection of why we're talking about eBay.

3 So in accounting when we're preparing
4 tax returns and things like that, we're looking at
5 the prior year, correct?

6 A. Correct.

7 Q. And so, for example, Mr. Faulkenberry's
8 tax returns have not been prepared yet for 2017,
9 have they?

10 A. They have not.

11 Q. Okay. And so as of January 1st, 2017,
12 so basically, all the way through the end of 2016,
13 what was your assessment of Mr. Faulkenberry's
14 business? Was it financially viable as of
15 January 1st, 2017?

16 A. No.

17 Q. And why not?

18 A. Well, the loans -- the loans had to be
19 paid off, and there wasn't enough profit being
20 generated to pay the loans off and pay it back. So
21 at that point, the business was put up and, I
22 believe, sold.

23 Q. And let's rewind a couple of years. At
24 the end of 2014, December 31st of 2014, before this
25 incident that gave rise to this lawsuit ever

1 happened, was Mr. Faulkenberry's business,
2 Richardson Chop Shop, financially viable at that
3 point in time?

4 A. Yes.

5 Q. And how can you say that?

6 A. Well, if you look --

7 Q. Or why do you say that?

8 A. You can look at the numbers and
9 extrapolate that. I mean, he paid himself
10 approximately 12 in payroll.

11 Q. And use complete numbers, please.

12 A. 12,000 in payroll. I'm guessing -- and
13 I don't have the numbers in front of me. I have
14 them at my office, but there was a significant
15 amount of Section 179 depreciation. So when you
16 add that all back in, you're probably at a profit
17 level of approximately \$30,000 for that year.

18 Q. Okay. And we'll get into that in more
19 detail in just a moment. So your opinion regarding
20 whether or not Richardson Chop Shop is financially
21 viable as of January 1st, 2017, is what?

22 A. Well, like I said, one of the things you
23 look at -- you know, I performed a compilation, but
24 if you look at a business that has an audit done on
25 it, you have to look at the ability of that

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1 business to continue as what they call a going
2 concern, meaning is it likely to be a business in
3 the future, in the near future.

4 Q. And as of January 1st, 2017, was
5 Richardson Chop Shop able to continue business?
6 Was it a going concern?

7 A. No. It would not -- if you were to
8 audit the financial statements, you would have to
9 say that there was a going concern issue, that it
10 would not be in business in the near future.

11 Q. That was the not financially viable?

12 A. Correct.

13 Q. And is that your opinion to a reasonable
14 degree of accounting certainty?

15 A. Yes.

16 Q. Did Richardson Chop Shop experience a
17 significant loss of profits from January 15th,
18 2015, to the present?

19 A. Yes.

20 Q. How do you know that?

21 A. Purely from the numbers.

22 Q. And when you say that, you're referring
23 to the document in front of you?

24 A. The comparative financial -- or
25 comparative income statement and looking at the

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1 pattern of decline in revenue, decline in
2 purchases, and then, you know, expenses. There's
3 a -- probably a \$42,000 swing between 2014 and 2016
4 from a profitability standpoint.

5 Q. And is that significant loss in
6 profits -- is that your opinion to a reasonable
7 degree of accounting certainty?

8 A. Yes.

9 Q. Did Richardson Chop Shop experience a
10 significant decline in procurement of inventory
11 from January 15th, 2015, to the present?

12 A. Yes.

13 Q. And why do you say that?

14 A. Again, the inability to travel and buy
15 new inventory. That's one of -- one of the
16 components of cost to consult is your -- your
17 purchase for the -- purchases for the year. So
18 purchases were down in '15 and down in '16 and just
19 not new product to be able to sell to generate
20 revenue.

21 Q. And is that your opinion to a reasonable
22 degree of accounting certainty?

23 A. Yes.

24 Q. According to my records,
25 Mr. Faulkenberry is 48 years old. Does that sound

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1 right?

2 A. Sounds about right.

3 Q. And what's your understanding of the
4 social security retirement age for someone his age?

5 A. Since I'm 49, I believe it's 67, around
6 there.

7 Q. And based on that retirement age, is it
8 your assumption that Mr. Faulkenberry would have
9 continued to run Richardson Chop Shop for at least
10 another 19 years?

11 A. I think that's reasonable to say he
12 would have.

13 Q. And I want to crunch some numbers, and
14 if you need to use your notepad, you're welcome to.
15 Based on your comparative income statement, Exhibit
16 No. 27, if we project out 19 years, what is the
17 total loss of profit, including his salary and rent
18 he was paying himself, that Richardson Chop Shop
19 would have experienced during that 19-year time
20 frame? And take your time.

21 A. Around \$570,000, and that does not
22 include other things imbedded in the P&L that were
23 business-related but now become personal expenses,
24 such as the travel and the meals and the -- that
25 part of it. So that's just purely -- that excludes

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1 that. So that would add to it if we added that to
2 it.

3 Q. And so the \$570,000 number you just
4 gave, would you classify that as a conservative
5 figure?

6 A. I would say that it would only be added
7 to by the other things I referred to, so, yes.

8 Q. In other words -- in other words, it
9 would only go up?

10 A. It would only go up if you look -- dug
11 deeper into it.

12 Q. Okay.

13 A. It's a high level number, and like I
14 said, it's probably on the conservative side.

15 Q. And I want to go over two things, one,
16 how you calculated that number; and, two, what
17 other numbers you could go back to your office and
18 look at that would add to it. And so let's go
19 through each of those. First, how do you calculate
20 that number? Can you explain to the jury how you
21 get there?

22 A. Sure. I sure can. We're looking at --
23 and I think we may have left out a little of the
24 profit in 14 in doing that, but he's had a \$12,000
25 salary per year. I believe there is about 8 in

1 rent he paid himself that's imbedded in the rent
2 number, and then there's also probably another
3 \$10,000 or so, give or take, on Section 179
4 deduction, which is accelerated depreciation on
5 assets, computers, and containers and different
6 things that would have been bought. So if you add
7 the 12,000, 8,000, and the 10, you're at 30,000;
8 times 19 years would be 570,000.

9 Q. And is your assessment of Richardson
10 Chop Shop's lost profits, the calculation you just
11 ran, is that based off of historical data?

12 A. It is.

13 Q. And did you assume in running that
14 calculation any growth in Mr. Faulkenberry's
15 business?

16 A. No. That -- I mean, that's -- assumes
17 just that things stayed about on average what they
18 were the years before.

19 Q. In a closely held corporation or
20 business entity like Richardson Chop Shop, is
21 evidence of the owner's salary relevant to
22 determining lost profits like you just did?

23 A. Yeah. When you look at an S corp, you
24 look at the -- three or four components. You look
25 at the owner's salary -- actually four, the owner's

1 salary, any flow-through -- leftover profit that
2 would flow through to the owner. You look at the
3 rent, and look at adding back in depreciation,
4 whether it's normal depreciation or Section 179.

5 So to get the true picture of what an
6 owner -- an S corp owner is making, you have to
7 look at those four pieces, and like I said, my
8 calculation included three of the four. It didn't
9 include the profit in 2014 because, like I said, I
10 wanted to be on the conservative side.

11 Q. Okay. And another issue that I'd like
12 for you to explain to the jury is how do
13 Mr. Faulkenberry's living expenses -- running that
14 business, how do they factor into his overall
15 financial picture?

16 A. Well, if you look in 2013, there was
17 about \$12,000 in travel that dwindled to about 700.
18 A lot of that travel would have been hotel and
19 gas-related, but a significant portion would have
20 been meals on the road that are a legitimate
21 business deduction, but if you are not traveling,
22 then they become a personal expense.

23 Q. In other words, we all have to eat?

24 A. We all have to eat.

25 Q. And so if he's on company time,

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1 traveling for the company, it's a legitimate
2 business expense to charge it like that?

3 A. Correct.

4 Q. But when the business declined, based on
5 your knowledge of everything that's happened, he
6 would then need to either buy groceries or find
7 some other way to feed himself out of his own
8 personal pocketbook?

9 A. You'd still have to eat. And like I
10 said, there's a significant reduction in the
11 pattern on the travel that would have included the
12 meals.

13 MR. SEELBACH: I will pass the witness.

14 EXAMINATION

15 Q. (Questions By Mr. Arnold) Mr. Mills, how
16 are you?

17 A. Good.

18 Q. You said you had four other customers
19 that were in the same industry as Mr. Faulkenberry.
20 Those are four other clients of yours who live in
21 the Lockhart area who sell motorcycle parts online?

22 A. One lives approximately an hour away.
23 The other one lives in Austin, but has a facility
24 somewhere near Lockhart, and the other one is
25 basically close to Lockhart.

1 Q. And they do the same thing. They buy
2 motorcycle parts from around the country and sell
3 them on eBay?

4 A. Yes.

5 Q. Sorry. You have to give verbal answers
6 for the court reporter.

7 A. Yes.

8 MR. SEELBACH: Just real quick because I don't
9 know what direction you're going and I just -- if
10 you'd like me to state an objection, I can, but I
11 think we can do this in a -- just a friendly way.
12 Are you going to try to get into, like, numbers on
13 these companies --

14 MR. ARNOLD: No.

15 MR. SEELBACH: -- and who they are?

16 Okay. I just had a privacy concern that
17 we would just need to paper up something.

18 MR. ARNOLD: No.

19 MR. SEELBACH: Okay.

20 Q. (By Mr. Arnold) How did you get five
21 clients who all deal in motorcycle parts online?

22 A. I believe one referred a -- one existing
23 client referred the other ones to come into the
24 office. So I was already familiar with that
25 business, if you will. I think it felt it made

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1 sense to send the other guys there.

2 Q. So they were all friends and just word
3 of mouth?

4 A. I think it's a -- I think it's, yeah, a
5 small community, if you will.

6 Q. Do you know how they knew each other?

7 A. No.

8 Q. Do you ride a motorcycle?

9 A. No, I do not. The last time I was on a
10 motorcycle I was 18 years old and fell off of it,
11 took all the skin off my shoulder, and I was on the
12 back. I wasn't driving. So I haven't been on one
13 since I was 18.

14 Q. You talked earlier about a back injury
15 Mr. Faulkenberry sustained. How do you come about
16 that knowledge?

17 A. Well, in our discussions of what the
18 numbers are doing, you know, he said, I had a back
19 injury and haven't been able to do the work I used
20 to do.

21 Q. He, being Mr. Faulkenberry?

22 A. Mr. Faulkenberry, yes.

23 Q. Okay. So it's based on what Lawrence
24 Faulkenberry told you?

25 A. And I believe it was probably in the

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1 local news too, but I'm not sure if I connected it
2 with him when it was in the local news.

3 Q. But you're not a medical doctor, right?

4 A. No.

5 Q. And you haven't reviewed any medical
6 records in this case, correct?

7 A. No.

8 Q. Do you have any medical opinions you
9 would offer a jury?

10 A. No. I stick to my area of expertise,
11 which is small business, taxes, and that core area.
12 So that's outside my realm of -- area of expertise.

13 Q. Okay. Would it be fair to say
14 everything you know about Mr. Faulkenberry's
15 personal or health issues stem from what
16 Mr. Faulkenberry told you?

17 A. Yes.

18 Q. Earlier the phrase was used that
19 Mr. Faulkenberry's back injury was the proximate
20 cause of his decline in revenue for the business.
21 Do you know what proximate cause means?

22 A. I would say the reason for or it
23 happened around the same time period causing, but I
24 do not know the technical definition.

25 Q. Okay. Did anybody ever explain to you

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1 the technical definition of proximate cause?

2 A. No.

3 Q. You said that Mr. Faulkenberry sold his
4 business; is that right?

5 A. Correct.

6 Q. Do you know when he sold his business?

7 A. In early 2017. I believe it -- in the
8 early part, probably sometime in January.

9 Q. Do you know what he sold his business
10 for?

11 MR. SEELBACH: I'll object only to the extent
12 it calls for speculation.

13 Answer if you know.

14 A. I don't know, off the top of my head,
15 but it was somewhere in the 110 to 115 range, 110
16 to 115,000 range, I believe. And I believe that
17 also included some property.

18 Q. (By Mr. Arnold) What property?

19 A. The property the business was on.

20 Q. So Mr. Faulkenberry no longer lives at
21 the property he was on before?

22 A. I don't know where he lives. I just
23 know the property was part of the transaction, so
24 I'm not sure if he remained or if he moved. I
25 don't know.

1 Q. You said Section 179 depreciation
2 several times. What is that?

3 A. That's accelerated depreciation. So
4 using an example would be if you go buy a computer
5 for a thousand dollars, you can take that computer
6 off over a number of years and depreciate it over
7 time, over it's useful life, or you have
8 Section 179 depreciation in which a company can
9 take generally now up to half a million dollars in
10 accelerated depreciation.

11 So that company may elect to take all
12 thousand dollars that first year, and so from a
13 profit standpoint, that flows through on a K1
14 schedule from the S corp and flows through to the
15 owner. So let's say the K1 schedule had 5,000 in
16 profits; they took a thousand in depreciation. The
17 net on their tax return is going to be the 4,000.
18 So it's accelerated depreciation. It's also called
19 Section 179 depreciation.

20 Q. Okay. So instead of using a straight
21 line depreciation method, you just depreciate the
22 asset within the first couple years?

23 A. The first year.

24 Q. The first year?

25 A. You make the election the first year.

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1 Q. Okay.

2 A. It's a very common tool used to try to
3 zero out profit, and I have clients that come in
4 October, November and say, "Hey, I've got about
5 80,000 in profit. I need to buy a machine. If I
6 buy an \$80,000 machine, I can zero my profit out."
7 And at that point, you're saying, "Okay. Does it
8 make sense to buy it this year? What does next
9 year look like?" So it's used in planning quite a
10 bit.

11 Q. A good tool to offset profits. If you
12 have a lot of profits in one year, you could take a
13 bunch of depreciation so you're not paying taxes on
14 the profit that year?

15 A. And you have to keep in mind that you're
16 robbing from a future year, so you can do that for
17 so long, but you have to -- you have to look at
18 future years too when you're doing that.

19 Q. Okay. Let's go to your 570,000 number
20 you calculated. You wrote it down. Can I just see
21 your math real quick --

22 A. Sure.

23 Q. -- just so maybe I can understand a
24 little better how we got it.

25 A. I took the \$12,000 in salary that was

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1 historically what he's paid himself, and I believe
2 he paid himself that in '14. I took 8 in what I
3 think was his rent for that year where he owned the
4 property and rented -- paid some rent, which is
5 another tool you use to get the profit down or the
6 taxes down, and then added in Section 179
7 depreciation, and, again, that number could be a
8 little lower; it could be a little higher. That's
9 a rough --

10 Q. Okay.

11 A. -- rough estimate.

12 Q. So you did 12,000 plus 8,000 plus 10,000
13 to total 30,000, correct?

14 A. Uh-huh.

15 MR. SEELBACH: Answer out loud.

16 A. And I can go back and look --

17 Q. (By Mr. Arnold) You have to say yes or
18 no.

19 A. Yes, I did. I could go back and look at
20 more detail in my office and zero in on that, but
21 for the exercise here today, that's what I see from
22 the 2014 P&L.

23 Q. Okay. The -- I don't have a copy of
24 that with me. Can I borrow your --

25 A. This one?

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1 Q. No. Is that the one you're looking at?

2 A. I'm looking at --

3 Q. It's number 577 at the bottom?

4 A. Correct.

5 Q. Okay. Let me give you your notepad
6 back. I'm sorry.

7 The 2014 years, which you're looking at,
8 where do you get the -- I see a --

9 A. The 12,000 in payroll is part of the
10 25,650.

11 Q. Okay.

12 A. The rent -- and, again, I believe some
13 of that is rent on equipment. I believe the other
14 8,000 is rent paid to himself from the S corp., and
15 then on depreciation, that 10,000 number's going to
16 be on a K1 schedule that's not part of this
17 exhibit. I just know historically he's had a
18 substantial number of assets that he's bought over
19 the years that we've used additional depreciation
20 on.

21 Q. So that leads you to calculate a, would
22 you say, net operating income of \$30,000 a year?

23 A. That was a -- like, the rough estimate,
24 yes.

25 Q. And that would be -- you're attributing

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1 that as Mr. Faulkenberry's gross income on his
2 personal tax return?

3 A. That would be net profit from the
4 business. The total amount of income derived from
5 the business is what I would say.

6 Q. You also do Mr. Faulkenberry's personal
7 income taxes, correct?

8 A. Correct.

9 Q. Does he derive income from any other
10 source?

11 A. I'd have to go back and pull the return
12 and look at that. I don't believe he has any other
13 taxable income.

14 Q. He does get income from Social Security
15 Disability, though, right?

16 A. I believe he does, but I believe that's
17 also -- none of it's taxable on his return.

18 Q. The -- I understand how you get to the
19 \$30,000 here, the 12,000 salary, 10,000 rent, 8,000
20 depreciation, and that's 30,000. How do we now get
21 to 570,000?

22 A. That was the projected number of years
23 of continuing to run the business until retirement
24 age of 67.

25 Q. Okay. So you just did 30 times 19?

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1 A. Correct.

2 Q. Okay. Thirty times 19 years, and that's
3 570. Gotcha.

4 Did you do a discounted cash flow
5 analysis to determine the \$570,000 number?

6 A. I did not.

7 Q. Do you think that that would be an
8 appropriate way to determine a future lost income?

9 A. It might be. There are different ways
10 to value a business, and that's a whole other
11 engagement --

12 Q. Okay.

13 A. -- if you will.

14 Q. Does that include any medical expenses
15 in that \$570,000 number?

16 A. I don't believe so, no.

17 Q. Okay. Does that include any fringe
18 benefits?

19 A. No.

20 Q. Okay. Or loss of household services?

21 A. No.

22 Q. When you calculated that number, you're
23 assuming Mr. Faulkenberry will retire at age 67,
24 correct?

25 A. That would be the assumption of that.

1 Q. And part of that assumption is he will
2 be alive at age 67?

3 A. Correct.

4 Q. And you didn't look at any life
5 expectancy charts to determine that, did you?

6 A. No.

7 Q. Okay. You're basing the 19 years of
8 additional time Mr. Faulkenberry would work just
9 based on the assumption he's going to retire at
10 age 67 and not that he would physically be able to
11 do the job at age 67, correct?

12 A. That he would retire at age 67 would be
13 the assumption.

14 Q. Okay. Do you have any experience in how
15 many people are 67 years old and are engaged in the
16 motorcycle parts business?

17 A. No. I think the client base that I have
18 are all probably between 40 and 55, if I had to
19 guess their age. I can go back and look at it.

20 Q. Okay. So you haven't calculated the
21 work life expectancy of Mr. Faulkenberry?

22 A. No. I'm sure you can pull actuarial
23 tables and determine that, but I have not done that
24 as part of this exercise.

25 Q. Have you investigated any other type of

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1 jobs that Mr. Faulkenberry could engage in besides
2 his motorcycle business with his current level of
3 mobility, I guess?

4 A. No, I have not.

5 Q. Okay. So you're not aware -- maybe
6 Mr. Faulkenberry could go get a job doing something
7 else, maybe not making as much money as he was
8 making running his parts business, but possibly
9 doing something else, correct?

10 MR. SEELBACH: Objection, calls for
11 speculation.

12 Q. (By Mr. Arnold) To the extent you can
13 answer the question.

14 A. Well, I am assuming there are places out
15 there where pretty much anybody can be employed,
16 whether it's taking tickets at a movie theater or
17 anything else so -- but, again, I don't know what
18 the extent of his injuries are.

19 Q. Okay. Go ahead.

20 A. I just know that based on my discussions
21 and -- and the current industry he's in, that
22 it's -- from a numbers standpoint, it's affected
23 the numbers. So going out into the future and what
24 he can do, I wouldn't be able to comment on.

25 Q. Okay. So you haven't -- let me rephrase

1 the question. The \$570,000 number you just
2 calculated assumes that Mr. Faulkenberry will never
3 work again?

4 A. That would be correct.

5 Q. And --

6 MR. SEELBACH: I'm going to object to the
7 extent it mischaracterizes the lost profit
8 calculation.

9 MR. ARNOLD: Well, okay.

10 Q. (By Mr. Arnold) And, again, you haven't
11 done any investigation into Mr. Faulkenberry's
12 capacity to work in some other profession?

13 A. No. That's not my area of expertise.

14 Q. You're aware of the concept of the time
15 value of money, correct?

16 A. Uh-huh.

17 Q. In that concept -- could you explain
18 that concept to the jury?

19 A. Well, money is worth more now than in
20 the future, right? So a lottery winner is a good
21 example. They can take periodic payments over
22 20 years or get it all upfront. There's more value
23 in having the money upfront and being able to do --
24 do with it what you want and earn on it versus
25 having it paid out over a longer period. So it --

1 Q. If we wanted to figure out how much
2 \$570,000 in 19 years is worth today, how would we
3 do that?

4 A. That's a calculation.

5 Q. What is that calculation?

6 MR. SEELBACH: Objection to the extent it
7 calls for speculation.

8 You can answer.

9 A. Well, it gets into the time value of
10 money, and it gets into present value -- present
11 value calculations, but, again, that is not my area
12 of expertise. My area of expertise is a small
13 business, QuickBooks taxes. I mean, I could go and
14 look it up and calculate it, if we had to, but it's
15 strictly a calculation. There are probably more
16 than one ways -- more than one way to calculate it.

17 Q. (By Mr. Arnold) Would a way to calculate
18 that be a discount in cash flow analysis?

19 A. That would certainly be one of them.

20 Q. Okay. In a discounted cash flow
21 analysis, you look at various factors, but
22 essentially, you're taking -- say I give you
23 \$10,000 today, and then in 19 years it's going to
24 be worth X number of dollars, correct?

25 A. Uh-huh.

1 Q. And that's with the discounted cash flow
2 analysis. So you can do the reverse of that. You
3 can say, Okay, in 19 years, I need \$570,000, and
4 then how -- how much money would I need today in
5 order to obtain that \$570,000, correct?

6 A. Correct.

7 Q. Okay. And you have not done that?

8 A. I have not done that.

9 Q. Have you been asked to do that?

10 A. No.

11 Q. The \$570,000 number you just came up
12 with, was today the first time you were asked to
13 calculate that?

14 A. I did calculate it for the first time
15 today.

16 Q. Okay. Did anybody talk to you before
17 today about coming up with a number of -- that
18 expresses Mr. Faulkenberry's lost income?

19 A. No.

20 Q. How long have you been
21 Mr. Faulkenberry's accountant?

22 A. Probably seven or eight years, somewhere
23 in that time frame. I'd have to go back and look.

24 Q. So around 2010?

25 A. 2010 or maybe before then. It may have

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1 been a little longer.

2 Q. Do you think --

3 A. I'd done some work with this industry
4 since 2005, but I believe he came along after that.

5 Q. Did you do a 2010 tax return for
6 Mr. Faulkenberry?

7 A. I believe I did. I'd have to go back
8 and look. My tax software only prints out a
9 five-year history. I'd have to go to an earlier
10 version to get that.

11 Q. Is that why you only use the last five
12 years is because that's --

13 A. That's what it prints out of the --
14 yeah. And, of course, now we have '16 so -- but,
15 again, if I printed it from my '16 software, it
16 would only go back to '12, 2012, so I'd have to go
17 to an earlier year to get the rest of the data, but
18 it's obtainable.

19 Q. Okay. But you didn't look at 2010 or
20 2011 data for your testimony here today?

21 A. I looked at 2011 through 2016 data.

22 Q. 2011 through 2016. Okay. So the only
23 year that we're missing from the data in front of
24 you is 2010?

25 MR. SEELBACH: Objection to the extent it

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1 calls for speculation.

2 Answer if you know.

3 A. I again don't remember exactly when I
4 started doing it. It could have been '10. It
5 could have been '9. It could have -- might have
6 been as far back as 2008. I'm not sure. I'd have
7 to go back and look.

8 Q. (By Mr. Arnold) Okay. But you didn't
9 look at any data before 2011 --

10 A. No.

11 Q. -- for your testimony today, correct?

12 A. No.

13 Q. Would it be helpful to you as an
14 accountant to go back and look at, maybe, the last
15 ten years of tax returns, instead of the last five
16 years?

17 A. You could go back and look at the last
18 ten and see what the pattern is, if you will, but I
19 thought the four years, '10 through -- '10 through
20 '16 are the most relevant, considered the most
21 current, and '11 through -- '11 through '14 are
22 relatively comparable, if you will.

23 Q. Do you know --

24 A. I felt like -- I felt like that was a
25 good enough baseline, if you will.

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1 Q. Do you know what Mr. Faulkenberry did
2 before he was in the motorcycle parts business?

3 A. I do not know.

4 Q. Part of what Mr. Faulkenberry does with
5 his business, as you said before, is he takes
6 advantage of -- and legitimately --

7 A. Uh-huh.

8 Q. -- some tax advantages of being a small
9 business owner, correct? He -- the business makes
10 the income, Richardson Chop Shop, S corp. He can
11 then pay himself a salary out of that. Does he
12 depreciate his -- or he pays rent to his office
13 space on his property, correct?

14 A. Yeah. With an S corp, it's like any S
15 corp. You're trying to not have as much -- an S
16 corp is a flow-through entity from a profit
17 standpoint, just like a partnership. Any net flows
18 through to the owners, and so on an S corp, you're
19 trying to pay out salary, rent, and use
20 depreciation to get that number as close to zero at
21 the end of the year as you can, so there's no
22 untaxed profit, if you will.

23 Q. Right. Because if the S corp -- if
24 Richardson Chop Shop, Incorporated, has a profit at
25 the end of the year, that profit's going to be

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1 taxed on Mr. Faulkenberry's gross income?

2 A. It's going to be on taxed income that
3 flows through to him, yes.

4 Q. Okay. And then, he's going to pay that
5 as gross income on his --

6 A. Yes.

7 Q. -- personal income tax, right?

8 A. Correct.

9 Q. So the idea is to make the business come
10 as close as possible to losing money, at least on a
11 balance sheet?

12 A. It's to try and zero out the profit, if
13 you will, and there are advantages to paying rent
14 income. It's not taxed for self-employment taxes,
15 so any reasonable rent you can pay yourself you do
16 with an S corp., and you generally own properties
17 individually and have the S corp rent it from you.

18 Q. Okay. So he owned his office, which was
19 next to his house, and then Richardson Chop Shop
20 rented that from him?

21 A. Yes.

22 Q. Correct? And that's the rent you see on
23 your comparative income statement?

24 A. Correct.

25 Q. Okay. And then the payroll number --

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1 you said he pays himself \$12,000 a year. I see a
2 \$25,000 number and a \$30,000 number from 2014 and
3 2013, respectively. Was he paying other people
4 those years?

5 A. He had other people on the payroll. You
6 will also notice the contract labor number above
7 that where people were paid to come -- people were
8 paid contract labor work too, so there's two
9 components, and I don't remember who was -- I don't
10 know his employees. We do the payroll. We do
11 process payroll for him, so I have those records.
12 I just don't know -- we do payroll for 70
13 companies, so I don't know who that includes. I
14 just know on his return it's normally around
15 \$12,000 is his payroll.

16 Q. Okay. But that -- he's basically paying
17 him -- paying himself a rent to use the office
18 space. He's deducting his telephone, I see --

19 A. Yeah.

20 Q. -- and other expenses like that,
21 correct?

22 A. And you have to keep a -- you have to
23 pay yourself a reasonable amount as an S corp
24 owner, and you have keep that as 60 percent salary,
25 and any other money you take out would be 40

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1 percent in distribution, so there's a -- there's a
2 method that you use for that. But, yeah, he does
3 have his other expenses on here also.

4 Q. Okay. And don't get me wrong. I'm not
5 saying he's doing anything wrong.

6 A. Yeah. No. It's a planning tax
7 strategy. You know, you try and pay as little as
8 possible legally within the tax code, and the
9 reason the S corp was set up was for those very
10 reasons.

11 Q. Okay. So based on your experience doing
12 Mr. Faulkenberry's personal tax returns, he makes
13 approximately \$12,000 a year in gross income?

14 MR. SEELBACH: Objection to the extent it's
15 vague and ambiguous.

16 Answer as best you can.

17 A. He has around 12,000 in W-2 income. I'd
18 have to go back and pull his personal returns to
19 see if there were anything else on there. I'd --
20 you'd have to look and see what adjusting gross
21 income was, I guess.

22 Q. (By Mr. Arnold) Okay.

23 A. And I don't -- I don't have that figure.

24 Q. But his W-2 from Richardson Chop Shop is
25 \$12,000 a year?

1 A. It's averaged around 12.

2 Q. Okay. Do you have this, the
3 accountant's compilation report?

4 A. I do.

5 Q. If you could look at that with me, it's
6 Bates 576, and I'm going to kind of read through
7 this with you and then ask some questions. You say
8 in here, the second sentence, "I have not audited
9 or reviewed the accompanying statement of income
10 and, accordingly, do not express an opinion or
11 provide any assurance about whether the income
12 statement is in accordance with the income tax
13 basis of accounting."

14 I think I know what you mean by saying
15 you haven't audited or reviewed the accompanying
16 statement of income?

17 A. Yeah. Reviewing and audit have higher
18 levels of responsibilities and procedures, so
19 that's the paragraph that clarifies my role, I
20 guess, if you will, and my level of responsibility.

21 Q. Okay. And if you did an audit, it would
22 require more work on your part?

23 A. You would do field procedures. You
24 would do different testing and different things
25 like that.

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1 Q. Okay. So you don't have an -- I mean,
2 this, what this says, you do not have an -- you do
3 not express an opinion or provide an assurance
4 about whether the income statement is in accordance
5 with the income tax basis of accounting, correct?

6 MR. SEELBACH: Objection, the document speaks
7 for itself.

8 A. Yeah. That's the standard language that
9 you have to put as part of the requirements of
10 issuing and compiling financial statements.

11 Q. (By Mr. Arnold) Okay. And what income
12 statement are you referring to in this letter?

13 A. The comparative income statement
14 attached to it.

15 Q. Okay. The Bates label 577? Sorry. We
16 called that --

17 A. Yes, 577.

18 Q. Yeah. Bates label Faulkenberry 577?

19 A. Yes.

20 Q. Okay. So part of what you're saying
21 here is that you're not professionally giving an
22 opinion about whether the comparative income
23 statement is in accordance with the income tax
24 basis of accounting?

25 A. It's just clar --

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1 MR. SEELBACH: Objection, the document --
2 objection, the document speaks for itself.

3 You can answer.

4 A. Yeah. It's clarifying my role and
5 the role of management. The next paragraph is the
6 role of management and what their requirements are.

7 Q. Okay. And management is
8 Mr. Faulkenberry?

9 A. Correct.

10 Q. Okay. What are the income tax basis of
11 accounting? What do you mean by that?

12 A. It's the cash basis. He's a cash basis
13 taxpayer versus an accrual basis taxpayer.

14 Q. Okay. What does that mean?

15 A. That means you take the income and
16 deductions when you receive them versus accruing
17 it. So if I bill you December 31st and I didn't
18 receive the cash, I don't count it from a cash
19 basis. You pay me January 8th, from an accrual
20 basis, it would still count as income, but from a
21 cash basis, it doesn't. Your income and expenses
22 are recorded when actually paid.

23 Q. Okay. So what are you saying here?
24 That this is not in accordance with the income tax
25 basis of accounting, what does that mean to a

1 layperson?

2 A. It's not saying -- it is in accordance
3 with the income tax basis of accounting. It's I
4 don't provide any assurance. It's a legal -- a
5 legal term that has to be put in there on the
6 compilation report.

7 Q. Okay. The next paragraph you say,
8 "Management is responsible for the preparation and
9 fair presentation of the financial statements in
10 accordance with the income tax basis of accounting
11 and for designing, implementing, and maintaining
12 internal control relevant to the preparation and
13 fair presentation of the financial statements,"
14 correct?

15 A. Uh-huh.

16 Q. And that means that management, being
17 Mr. Faulkenberry, is responsible for making sure
18 the data on your comparative income statement is
19 accurate?

20 A. That's correct.

21 Q. Okay. And that's an assumption you make
22 as an accountant --

23 A. That's an assumption.

24 Q. -- that it is correct?

25 A. And that's something you have them sign

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1 and say it's correct; they're providing all the
2 information.

3 Q. Okay. The next paragraph -- and I'm
4 going to jump to the second sentence. You say,
5 "The objective of a compilation is to assist
6 management in presenting financial information in
7 the form of the income statements without
8 undertaking to obtain or provide any assurance that
9 there are no material modifications that should be
10 made to the financial statements," correct?

11 A. Correct.

12 Q. Okay. And that means that this document
13 is just to assist management, but you're not going
14 in depth and saying everything on here is
15 completely accurate?

16 A. You're not going into procedures that
17 prove the accuracy of it like you would a review or
18 an audit.

19 MR. SEELBACH: And I'm just going to object to
20 the extent the disclaimer speaks for itself.

21 A. And in my client base, a business this
22 size, it's almost cost prohibitive to have a
23 full-blown audit just because of the fees involved
24 because there's a high level of assurance. There's
25 a lot more work. So, yeah, this -- this is the

1 standard CPA letter, if you will.

2 Q. (By Mr. Arnold) Okay. In the last
3 paragraph, you say, "Management has elected to omit
4 substantially all of the disclosures ordinarily
5 included in financial statements prepared on the
6 income tax basis of accounting." What does that
7 mean?

8 A. You have your three basic statements,
9 balance sheet, income statement -- some people call
10 it a profit and loss statement. Then you have a
11 statement of cash flows that reconciles your
12 beginning cash, your end cash, and whether it was
13 used for investing, financing, the different
14 categories it was used for.

15 In the market I'm in, banks don't
16 require that one, and it, again, is a higher level
17 of service I have to charge more for, so I
18 generally omit the statement of cash flows on any
19 financials we do out of the office.

20 Q. Do you have these disclosures ordinarily
21 included in financial statements?

22 A. No. That would be notes to the
23 financial statements, and we don't -- since we've
24 admitted them, we don't prepare them.

25 Q. Okay. So that's something

1 Mr. Faulkenberry has?

2 A. You don't have to have them notes if you
3 omit them. So the notes would be on a full-blown
4 set of financial statements that had the statement
5 of cash flows and the notes, and then you would
6 have them, but there was no undertaking to prepare
7 that for this or really any other of the work I've
8 done.

9 Q. Why not?

10 A. Again, it's a higher level of service.
11 I'm reviewed on the -- I have a peer review every
12 three years on the work I do on financial
13 statements, so it puts me into a higher risk pool,
14 if you will. It costs more for the client.
15 There's no need. In the market I'm in, there's
16 generally no need for those two things. All the
17 local banks accept what we currently have here.

18 Q. Okay. The next sentence is, "If the
19 omitted disclosures were included in the financial
20 statements, they might influence the user's
21 conclusions about the entity's revenues and
22 expenses." Does that mean that these numbers could
23 change if you had more information?

24 A. It means that the user's opinion might
25 be changed. So if you're looking at buying a

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1 company and you have more information, that might
2 change your opinion on buying it or not, I mean,
3 that kind of thing. So it's -- again, this is
4 standard language. It's not that I put it in there
5 for any reason, other than I'm required to put it
6 in there.

7 Q. Okay. Who is the user that you refer to
8 in your letter?

9 A. The user in this case would be everybody
10 in the room. Normally -- normally, it's a bank.
11 Normally, I have clients going to a bank to obtain
12 a loan. It's a normal user, but it's any end user
13 in the financial statements.

14 Q. Okay. So in this case, presumably, it'd
15 be the jury because they're the ones who are going
16 to rely on your information?

17 A. Uh-huh.

18 Q. And then the last one you say, "This
19 income statement is not designed for those who are
20 not informed about such matters." What do you mean
21 by "such matters"?

22 A. Again, that's the -- the legal language
23 I'm required to put in there. I don't really mean
24 anything necessarily by it myself, but people who
25 are not versed in reading financial statements,

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1 that's what it's referring to. It's not designed
2 to teach somebody how to read some financial
3 statements. It's presenting historical data.

4 Q. And then finally, you say, "I'm not
5 independent with respect to Richardson Chop Shop,
6 LLC." Does that have a technical meaning?

7 A. That probably means I set the LLC up for
8 Mr. Faulkenberry. If I do that, it impairs my
9 independence. So I don't have to be independent to
10 do a set of compiled financial statements, but you
11 would for a review or an audit, and since I stick
12 to compilations, I'm okay doing that, so I just
13 have to disclose it.

14 Q. Okay. So that means if Mr. Faulkenberry
15 wanted you to do an audit, you might not be able
16 to?

17 A. I couldn't. I couldn't.

18 Q. You couldn't do it?

19 A. Correct.

20 Q. That is part of, I guess, an ethical
21 requirement of being a CPA?

22 A. It means -- yeah. It's -- you have
23 different requirements. Independence is one of
24 them for certain levels of service.

25 Q. Okay.

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1 A. Yeah. And I'm pretty sure that's why
2 that's in there. I'm pretty sure I set that LLC up
3 for him.

4 Q. Do you think the data in the comparative
5 income statement that you prepared is reliable?

6 A. Do I think it's reliable? From a
7 standpoint of what I put on the comparative income
8 statement or from a standpoint of management
9 providing me that data?

10 Q. Well, I mean, I guess in kind of -- I
11 mean, we went through -- I know these are some --

12 A. Yeah.

13 Q. -- legal things --

14 A. You're kind of --

15 Q. -- you need to put in there
16 professionally.

17 A. You're kind of asking me to go beyond
18 what I've done here and give some other form of
19 verification that I'm not comfortable giving
20 because I didn't perform that level of service on
21 it.

22 Q. Okay. So what level of verification are
23 you comfortable with giving or were you -- did you
24 give?

25 MR. SEELBACH: Objection, vague and ambiguous.

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1 A. Again, it's all in the compilation
2 report, what my responsibility is, and I have to be
3 careful here for obvious reasons and what
4 management's responsibility is, so you're asking me
5 something -- a question I can't answer.

6 Q. (By Mr. Arnold) Okay. Well, I mean,
7 there's a jury who is going to rely on your
8 testimony.

9 A. Uh-huh.

10 Q. And I believe you to be a truthful
11 person, so I guess I need to know how much can a
12 jury rely on your comparative income statement,
13 given all the qualifications you have in your
14 preceding letter with it? Is this reliable enough,
15 in your professional opinion, for a jury to trust
16 it as evidence?

17 MR. SEELBACH: Object to the extent it calls
18 for a legal conclusion.

19 You can answer.

20 A. I guess I'm not -- again, you're asking
21 me to step over the line and do something that this
22 wasn't required to do. Assuming the information I
23 received was correct, the answer would be yes.

24 Q. (By Mr. Arnold) So that -- I guess
25 that's kind of what I am getting at.

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1 A. Yeah.

2 Q. That assumes that the information given
3 to you by Mr. Faulkenberry is correct?

4 A. Yeah. And that's -- those have all been
5 used to prepare tax returns and signed off on, so I
6 would assume he's been forthcoming with all the
7 information.

8 Q. So what is your opinion in this case?
9 What are you going to testify to the jury about?

10 MR. SEELBACH: Objection to the extent it
11 calls for a narrative.

12 A. I am not sure what I'm -- I mean, I've
13 been asked to prepare the -- prepare the financial
14 statements and interpret data at this point. I
15 haven't gone beyond that.

16 Q. (By Mr. Arnold) And I get this chart,
17 and I compared the chart to all the numbers in the
18 income tax statements you included, and I mean, the
19 numbers obviously match up. So this comparative
20 income statement is really just a different way of
21 viewing these various tax returns, correct?

22 A. Correct. It puts them all on one page.

23 Q. Right. So you can kind of compare
24 apples to apples over a period of time?

25 A. You can see a trend -- a trend in

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1 certain accounts probably, yeah. I think that's
2 fair.

3 Q. Okay. Did you do any more work than
4 just create the comparative income statement -- can
5 I call it a chart?

6 A. I would just say comparative income
7 statement, yeah.

8 Q. Okay. Did you do anything additional
9 besides that, other than take the numbers from the
10 tax return and put it into the comparative income
11 statement?

12 A. No. I do have backup to support numbers
13 on the tax return, but that's filed away. I'd have
14 to pull that.

15 Q. I'm gathering what you expect to testify
16 to at trial, if called as a witness, would be
17 really just that your comparative income statement
18 reflects the numbers that are in the tax return?

19 A. Well, I would --

20 MR. SEELBACH: Hold on. Objection to the
21 extent it omits prior testimony regarding
22 Mr. Mills' expert opinions regarding the decline of
23 the business and lost profit analysis.

24 A. I would anticipate looking at the
25 numbers, interpreting the numbers, and explaining

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1 the things that declined over that period as
2 compared to the three or four years before that,
3 just what we're -- what I'm doing here today. I
4 would expect it to be -- to be that.

5 Q. (By Mr. Arnold) Could you explain to
6 me -- I see in 2015, on your comparative income
7 statement, Mr. Faulkenberry sold \$144,792 worth of
8 goods, correct?

9 A. Uh-huh.

10 Q. And then the cost of those goods was
11 \$76,460, correct?

12 A. Correct.

13 Q. And I did the math. I used a
14 calculator, so you might want to trust me, but feel
15 free to do it yourself. That -- that leads to a
16 gross income of \$68,332.

17 A. Okay.

18 Q. And that was the year that you
19 understand Mr. Faulkenberry was injured on
20 January 15 of 2015, correct?

21 A. Uh-huh.

22 Q. Okay. So how do you explain that year
23 seems to be a decent year for Mr. Faulkenberry?

24 A. If you look at the calculation of cost
25 of goods sold, it's beginning inventory plus

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1 purchases less ending inventory. I would have
2 expected him to have sold out of existing inventory
3 for a big portion of 2015. I would expect
4 inventory based on '16 numbers to have been bled
5 down. So it's still showing, you know, more sales
6 compared to 2016, but still selling out of existing
7 inventory would be the explanation for that,
8 probably. You're basically costing that inventory
9 as you sell it. So as any inventory goes down,
10 it's an inverse relationship. Costing of some goes
11 up. So that's what I would expect to see there.

12 Q. Okay. So you're saying he already had
13 the stuff in his warehouses?

14 A. Yeah.

15 Q. And he was just selling it out of there?

16 A. He was selling existing inventory.

17 Q. Okay.

18 A. More so than new things that he
19 purchased, probably.

20 Q. Well, it seems to me to indicate that
21 his -- his ability to run his business profitably
22 related more to his ability to travel than his
23 ability to actually sell the items out of his
24 house?

25 MR. SEELBACH: Objection, argumentative.

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1 A. Yeah. I don't know enough about that
2 business. Like I said, I'm sure there is some
3 amount of work once you get a motorcycle then to
4 breaking it down because I know sometimes they
5 bought parts. Sometimes they bought motorcycles,
6 so, of course, you have to have the work of
7 stripping it down and cataloging and putting it on
8 eBay and stuff. So I know that a significant
9 portion of it is probably, based on my discussions
10 with them, based on the inability to travel and
11 bring in new parts. I don't know from there how
12 much things are affected because I don't know the
13 day-to-day operations of it.

14 Q. (By Mr. Arnold) What instructions were
15 given to you in this case when you created the
16 comparative income statement?

17 A. I would have to go back and look. I
18 think it was basically go back over a certain
19 number of years and put together and compare the
20 income statements and see what the trend is.

21 Q. And who asked you to put together the
22 comparative income statement?

23 A. Probably -- I don't know if it came from
24 the original attorney or if it came from Lawrence
25 himself. I don't remember who brought that to my

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1 attention.

2 Q. Do you know how much Mr. Faulkenberry
3 can lift?

4 A. No idea.

5 Q. How much weight?

6 A. No idea.

7 Q. Do you know if Mr. Faulkenberry
8 currently rides his motorcycle?

9 A. No idea.

10 Q. Do you know if Mr. Faulkenberry has had
11 back surgery?

12 A. I do not know.

13 Q. Do you know if Mr. Faulkenberry's back
14 has improved in the last year?

15 A. I have no idea.

16 Q. You may not be able to answer this
17 question, but I think you can as an accountant. If
18 your testimony is that Mr. Faulkenberry is going to
19 lose \$570,000 in income over the next 19 years
20 because of his back injury -- is that correct? Let
21 me just ask that first.

22 MR. SEELBACH: Objection to the extent it
23 misstates his prior testimony.

24 You can answer.

25 A. Could you repeat the question?

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1 Q. (By Mr. Arnold) Yeah. Is your
2 testimony that Mr. Faulkenberry should be paid
3 \$570,000 in this case because he has lost income
4 over the next 19 years?

5 MR. SEELBACH: Objection to the extent it
6 calls for a legal conclusion and invades the
7 province of the jury.

8 A. Again, my task is to look at the numbers
9 and identify the trends and also see what the lost
10 income might be from year to year. So, again,
11 there are a lot of variables in that. You know, we
12 said 19 years until he's full retirement age. He
13 could retire two years early. He could retire four
14 years later. You know, the laws tend to change on
15 social security. So, you know, I'm purely going at
16 the high level numbers, and we came to about 30 --
17 about 30 grand a year times 19 years, so I'm going
18 to limit it to that. I mean, that's what I would
19 testify for.

20 Q. (By Mr. Arnold) Okay. Let's assume
21 Mr. Faulkenberry will ask a jury to award him lost
22 wages, to compensate him for not being able to
23 work. Do you think it's, from an accounting
24 standpoint, fair for Caldwell County, who's the
25 Defendant in this case -- one of the defendants in

1 this case, to pay Mr. Faulkenberry \$570,000 today
2 in order to compensate him for that lost income you
3 calculated?

4 MR. SEELBACH: Objection to the extent it
5 calls for a legal conclusion and also calls for
6 speculation.

7 A. Yeah. I would leave that to the jury to
8 decide. That's not my -- I'm not saying -- I'm not
9 saying he needs to be paid this. We're simply
10 saying what we're projecting the lost -- profit
11 loss to be --

12 Q. (By Mr. Arnold) Okay.

13 A. -- for that period.

14 Q. Okay. Can you do a discounted cash flow
15 analysis as we sit here today to figure out how
16 much \$570,000 in 19 years is worth today?

17 MR. SEELBACH: Objection to the extent it
18 calls for speculation.

19 A. A discounted cash flow could be done.
20 I'm not -- I would say I wouldn't do it here. If I
21 need to do it, I can do it. I'm not going to do it
22 on the fly. It's something I would do and review,
23 and there's not time in this proceeding to do that.

24 Q. (By Mr. Arnold) Okay. I don't blame you
25 there.

1 A. It's like tax returns. I don't do tax
2 returns with people sitting there watching me.
3 There is too much room for error, so I do it and
4 then meet with them after that.

5 Q. Okay. But you would agree with me that
6 a -- if you're looking to be compensated for future
7 lost wages, the proper way of doing it would be to
8 determine through a discounted cash flow analysis
9 the present value of, in this case, \$570,000?

10 MR. SEELBACH: Objection to the extent it
11 calls for speculation.

12 A. Again, if I need to be engaged to come
13 up with what I think the different methods are and,
14 you know, the highs and lows, that could be done,
15 but I haven't gotten that far into the thought
16 process of discounted cash flows. I'm simply
17 looking at the numbers and interpreting them at
18 this point.

19 Q. (By Mr. Arnold) Okay. So you haven't
20 been asked to do that. I get that. So let's back
21 away from this case a little bit. Let's just go
22 into your experience as a CPA.

23 A. Yes.

24 Q. You're qualified to do a discounted cash
25 flow analysis, correct?

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1 A. (Witness nods head affirmatively.)

2 Q. Okay. You haven't been asked to do it
3 in this case, correct?

4 A. Right.

5 Q. If someone wanted to be compensated for
6 a future loss, in your opinion as a CPA, would the
7 proper way to do that would be to do a discounted
8 cash flow analysis to determine the present value
9 of the future income?

10 MR. SEELBACH: Objection to the extent it
11 calls for speculation.

12 A. If I were engaged to look at what
13 somebody should be paid, I would step back and look
14 at the different ways to calculate it and look at
15 all the variables. That would be one of them, yes.

16 Q. (By Mr. Arnold) Okay. What would be the
17 other ways of doing it?

18 A. There are different ways to look at
19 businesses. I mean, there are -- you have to look
20 at -- you have to look at different things that are
21 intangibles, the customer base that's built up.
22 Are those same customers coming back, coming back,
23 coming back? For a CPA practice, that's 1.2 times
24 your annual revenue. It's pretty easy. But for
25 other businesses, you get a lot deeper into what's

1 the value of that business going forward. So at
2 the end of the 19 years, not only would he have had
3 that revenue, what would he have sold it for? So
4 there's too many moving parts to try and answer
5 those kind of questions. There are different ways
6 to value it.

7 Q. Okay.

8 A. I'm not an expert in business
9 valuations, by any means, but there are multiple
10 ways to value a business --

11 Q. Okay.

12 A. -- not just the discounted cash flow
13 stuff.

14 Q. Okay. One of those ways might be like
15 using a capitalization rate, correct?

16 A. Yeah.

17 Q. Okay. And that's where you would take
18 net operating income and divide by a percentage?

19 A. That's not my area of expertise. I
20 could do it.

21 Q. Okay.

22 A. But like I said, I don't do a lot of
23 business valuations.

24 Q. Okay.

25 A. So I'd rather stick to what I'm

1 comfortable with.

2 Q. Sure. And that's probably maybe more of
3 an appraisal thing than a CPA thing, so I don't
4 want to get you off into the appraisal world but --

5 A. I see businesses bought and sold and I
6 deal with people buying and selling them.

7 Q. Okay.

8 A. I've bought businesses myself, so I know
9 there are a lot of factors that factor into buying
10 a business, not just the cash flow.

11 Q. And I've talked to a lot of people who
12 have done it before as well, and some of them just
13 do times two, times three, times four, kind of
14 thing depending on how much they like it, but that
15 could be a gas station or Wendy's or whatever so...

16 A. Different industries have different
17 methods. Like I said, CPA practice, 1.2 your
18 annual sales is the general valuation.

19 Q. Okay. And I'm not asking you to do that
20 here because clearly you weren't asked to do that
21 and determine what Mr. Faulkenberry's business was
22 worth, right?

23 MR. SEELBACH: Objection.

24 A. I appreciate that.

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1 Q. (By Mr. Arnold) And so let me just
2 clarify that. You were not asked to determine what
3 Mr. Faulkenberry's business was worth, correct?

4 MR. SEELBACH: Objection.

5 A. I have not done a business valuation on
6 the business, no.

7 Q. (By Mr. Arnold) Okay. Your testimony is
8 about Mr. Faulkenberry's personal income, correct?

9 MR. SEELBACH: Objection to the extent it
10 misstates his testimony.

11 A. Again, I've stated this probably three
12 times. My task was to come in and look at the
13 numbers over a certain period, look at the trend,
14 and see approximately what the drop in -- whether
15 its profit to the business or profit to him, would
16 have been.

17 Q. (By Mr. Arnold) Okay.

18 A. It's no more than that; no less than
19 that.

20 Q. Okay. So let's just assume the \$570,000
21 number you came up with is a number
22 Mr. Faulkenberry is losing over 19 years, okay?
23 What do you think is a proper way of calculating
24 what Mr. Faulkenberry should be paid today in order
25 to obtain that total amount?

1 MR. SEELBACH: Objection, asked and answered.
2 He's already stated he hasn't run a net present
3 value discount calculation.

4 A. Yeah. I mean, I wish I could answer the
5 question differently, but I feel like I'm answering
6 it consistently and it's being rephrased and
7 rephrased, and I'm going to be consistent and have
8 the same answer.

9 Q. (By Mr. Arnold) Just you weren't asked
10 to do it?

11 A. I wasn't asked to do it. It's not my
12 area of expertise.

13 Q. Okay. Okay. Do you feel comfortable
14 giving an opinion about how much Mr. Faulkenberry
15 should be compensated in this case for his lost
16 wages?

17 MR. SEELBACH: Objection to the extent it
18 invades the province of the jury and asked and
19 answered.

20 A. I can say what the lost -- what I think
21 the lost -- the profit loss is of what a -- what
22 somebody is compensated or paid. I think there are
23 a lot of things that go into that. It's not --
24 probably not just this. So I assuming that's
25 something more for the attorneys or somebody else

1 to answer.

2 Q. (By Mr. Arnold) Okay.

3 A. I've got a component of it, if you will,
4 but that's not the whole picture. So when you're
5 asking me to say what he should be compensated, I'm
6 not -- that's not, again, my area of expertise.

7 Q. Okay. And I know I'm beating a dead
8 horse a little bit.

9 A. Yeah.

10 Q. But I'm trying to get, like, an answer
11 for me because I think I know what you're saying,
12 but the problem is, is that in this case, at some
13 point, we're going to go before a jury, and the
14 jury is going to be asked to compensate
15 Mr. Faulkenberry for different things, right?

16 A. Uh-huh.

17 Q. One of those would be lost income.
18 Okay. And if your testimony is that he's losing
19 \$570,000 in income over a period of 19 years, I
20 understand your calculation there. But part of
21 what the jury has to do is figure out where these
22 numbers are coming from and how reliable they are,
23 right? So how comfortable are you in telling the
24 jury, yes, this \$570,000 number is very reliable?

25 MR. SEELBACH: Objection, asked and answered.

1 A. Again, I feel like I'm going through
2 a -- going in circles here. The answers are
3 reliable based on the engagement I've performed
4 based on the information I've been given. There
5 are variables in there that you'd have to go back
6 into and dig into a little deeper probably because
7 there could be more depreciation. Like I said, the
8 19 years is a best guess based on retirement age,
9 so there's a lot -- there's too many variables in
10 that to answer any more than I have.

11 I'm comfortable that there is a
12 significant amount of profit loss. I have said
13 it's in the \$30,000 range per year. However many
14 years that covers, we're just going out to
15 retirement age. I mean, it's no more complicated
16 math than that. So I'm sure the deliberations and
17 negotiations would be a lot more complex than that.

18 Q. (By Mr. Arnold) Okay.

19 A. I think mine -- mine, I think, is a
20 component of that so...

21 Q. Okay. And I get that. This kind of
22 seems like kind of back of the napkin sort of math
23 to me, though.

24 MR. SEELBACH: Objection, argumentative.

25 You don't have to answer that.

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1 A. I won't answer that. It's a little
2 bit -- a little bit insulting.

3 Q. (By Mr. Arnold) Well, I don't mean it to
4 be insulting but what -- I mean, you took three
5 round numbers, added them up, and multiplied by 19.

6 A. On a client that I'm intimately familiar
7 with the numbers on and I know what he does on a
8 year over year basis.

9 Q. Okay.

10 A. So if that's back of the napkin math,
11 then --

12 MR. SEELBACH: Objection.

13 Don't answer the question any more than
14 you already have.

15 Are we going to move on to a different
16 area? You've asked the question about five to ten
17 times now.

18 Q. (By Mr. Arnold) If you think
19 Mr. Faulkenberry is losing \$570,000 in gross
20 income --

21 MR. SEELBACH: Objection, misstates his prior
22 testimony.

23 Q. (By Mr. Arnold) What do you think
24 Mr. Faulkenberry is losing in income over the next
25 19 years?

1 MR. SEELBACH: Objection, vague and ambiguous.
2 Gross or net?

3 Don't answer if you can't.

4 A. If you want to zero in on a much more
5 accurate number, that can be done. That was not
6 asked for in this deposition today, but that can
7 absolutely be done. I have all the numbers to do
8 it. I just don't have them in front of me.

9 Q. (By Mr. Arnold) Okay. That's what I'm
10 trying to get at here, is to me, I feel like
11 there's -- there's a way to get a much more
12 accurate number than this number, correct?

13 MR. SEELBACH: Objection -- objection,
14 argumentative.

15 A. I think there is a way to get a more
16 accurate number, and I think the number is going to
17 go up from there, to be honest. I'm being
18 conservative on it. There are other -- many other
19 factors there, so --

20 Q. (By Mr. Arnold) Okay.

21 A. I see this all the time in businesses
22 so...

23 Q. Okay. I get that, and I know you weren't
24 asked to do an in-depth analysis in this case, and
25 I'm not trying to beat you up on it because I know

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1 that's not what you came here today to talk about.

2 A. Correct.

3 Q. But that's what I'm trying to ask you,
4 is there is a more in-depth way of analyzing these
5 numbers, correct?

6 A. There would be a more in-depth way of
7 analyzing it.

8 MR. SEELBACH: Objection, argumentative, asked
9 and answered.

10 Q. (By Mr. Arnold) Okay. And there is also
11 a way --

12 A. Like I said -- I'll state it again. I
13 think you're probably going to come out to where
14 this is a conservative number based on the
15 additional things you would do to it.

16 Q. Okay. And that may very well be. I'm
17 not going to fight you there. There is also a way
18 of taking that more in-depth analysis, determining
19 a final number, and translating that back into
20 present value, correct?

21 A. Correct.

22 Q. Okay. And that would be if I was going
23 to pay you for lost wages, I would not pay you
24 \$570,000. I would pay you some factor less than
25 that, correct?

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1 MR. SEELBACH: Objection, asked and answered.

2 A. If you were paying me, I wouldn't only
3 be looking at lost wages. I would be looking at
4 the business, what I would have sold it for in
5 19 years versus what I sold it for now.

6 Q. (By Mr. Arnold) Okay.

7 A. So there'd be another -- if it were me
8 personally, there would be another component. It
9 wouldn't just be looking at the lost wages.

10 MR. ARNOLD: Okay. I don't have any other
11 questions.

12 MR. SEELBACH: No other questions.

13 THE VIDEOGRAPHER: This concludes the
14 deposition of Kevin Mills. Going off the record,
15 the time is 11:37.

16 (Deposition concluded at 11:37 a.m.)
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UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 AUSTIN DIVISION

LAWRENCE FAULKENBERRY,)
 Plaintiff,)
 vs.) 1:15-CV-01089-SS
 CALDWELL COUNTY, TEXAS;)
 CALDWELL COUNTY SHERIFF'S)
 OFFICE; CAPTAIN JESSE)
 HERNANDEZ; SERGEANT YOST;)
 DEPUTY M. TAYLOR; and DEPUTY)
 HOUSESTON,)
 Defendants.)

REPORTER'S CERTIFICATION
 ORAL AND VIDEOTAPED DEPOSITION OF
 KEVIN MILLS
 APRIL 25, 2017

I, Katrina Faith Wright, Certified Shorthand
 Reporter in and for the State of Texas, hereby
 certify to the following:

That the witness, KEVIN MILLS, was duly sworn
 by the officer and that the transcript of the oral
 and videotaped deposition is a true record of the
 testimony given by the witness;

That the original deposition will be
 delivered to Mr. Karl Seelbach;

I further certify that pursuant to FRCP Rule
 30 (f) (1) that the signature of the deponent:

KEVIN MILLS, CPA
FAULKENBERRY vs CALDWELL COUNTY

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1 Was requested by the deponent or a party
2 before the completion of the deposition and that
3 the signature is to be before any notary public and
4 returned within 30 days from date of receipt of the
5 transcript. If returned, the attached Changes and
6 Signature Pages contain any changes and reasons
7 therefore;

8
9 I further certify that I am neither counsel
10 for, related to, nor employed by any of the parties
11 or attorneys in the action in which this proceeding
12 was taken, and further that I am not financially or
13 otherwise interested in the outcome of the action.

14
15 Certified to by me this 1st day of May, 2017.

16
17
18 
19
20
21

22 KATRINA FAITH WRIGHT, Texas CSR 9220
23 CSR Expiration: 12/31/18
24 ESQUIRE DEPOSITION SOLUTIONS
25 Firm Registration No. 283
9901 IH. 10 West
Suite 800
San Antonio, TX 78230
Telephone 210-331-2280

KEVIN MILLS, CPA
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1 COUNTY OF TRAVIS)

2 STATE OF TEXAS)

3 I hereby certify that the witness was
4 notified on _____, that the
5 witness has 30 days after being notified by the
6 officer that the transcript is available for review
7 by the witness and if there are changes in the form
8 or substance to be made, then the witness shall
9 sign a statement reciting such changes and the
10 reasons given by the witness for making them;

11 That the witness' signature was/was not
12 returned as of _____.

13 Subscribed and sworn to on this _____ day of
14 _____, 20____.

15
16
17
18
19
20
21 KATRINA FAITH WRIGHT, Texas CSR 9220
22 CSR Expiration: 12/31/18
23 ESQUIRE DEPOSITION SOLUTIONS
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CHANGES AND SIGNATURE

KEVIN MILLS

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SIGNATURE

I, KEVIN MILLS, have read the foregoing deposition and hereby affix my signature that the same is true and correct, except as noted on the previous page.

 KEVIN MILLS

THE STATE OF _____)

COUNTY OF _____)

Before me, _____, on this day personally appeared KEVIN MILLS, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

 NOTARY PUBLIC IN AND FOR

THE STATE OF _____

COMMISSION EXPIRES: _____

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FAULKENBERRY vs CALDWELL COUNTY

April 25, 2017
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EXHIBIT C

January 10, 2017

Lawrence Faulkenberry
P.O. Box 1501
Lockhart, TX 78644

Lawrence,

I have extracted data from your 2013-2015 Federal Income Tax Returns and also Compiled the 2016 Profit and Loss statement for Richardson Chop Shop, LLC. This data is in the Comparative Income Statement format attached.

Richardson Chop Shop, LLC is an S-Corp for Federal Income Tax purposes and Lawrence Faulkenberry has a W2 in each of the aforementioned years. I have prepared and filed the 1120S returns since 2011 for Richardson Chop Shop, LLC.

Beginning in 2015 there were significant declines in Sales and Purchases (See Comparative Income Statement) due to Lawrence's inability to travel. His E-Bay business buys motorcycle's and "parts them out" and sells them online. Supply constraints in the local area require that new inventory be sourced nationally. As in any business new inventory is essential for future sales.

In my opinion there is a substantial doubt about the ability for Richardson Chop Shop to continue as a going concern, due to two primary factors.

1. Lack of available inventory and more specifically new purchases.
2. Debt acquired in 2015 and 2016 to keep the doors open.

Kevin Mills, CPA

A handwritten signature in black ink, appearing to read "K Mills". The signature is written in a cursive, flowing style.

Kevin Mills CPA
1015 West San Antonio St, Suite A
Lockhart, TX 78644
512-376-4212

Lawrence Faulkenberry
Managing Member
Richardson Chop Shop, LLC

ACCOUNTANTS COMPILATION REPORT

I have compiled the accompanying Statement of Income- income tax basis of Richardson Chop Shop LLC (S-Corp) as of December 31, 2016. I have not audited or reviewed the accompanying Statement of Income and, accordingly, do not express an opinion or provide any assurance about whether the Income Statement is in accordance with the income tax basis of accounting.

Management is responsible for the preparation and fair presentation of the financial statements in accordance with the income tax basis of accounting and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

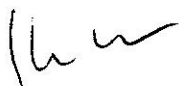
My responsibility is to conduct the compilation in accordance with Statements for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of the Income Statements without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements.

Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the entity's revenues and expenses. Accordingly, This Income Statement is not designed for those who are not informed about such matters.

I am not independent with respect to Richardson Chop Shop LLC.

Kevin Mills, CPA

January 10, 2017



**Richardson Chop Shop
Comparative Income Statement
For Tax years 2013-2016**

	2,016		2015		2014		2013
Sales	\$	90,912	\$	144,792	\$	170,990	\$ 186,264
Cost of Good Sold	\$	58,979	\$	76,460	\$	63,889	\$ 124,402
Expenses							
Accounting	\$	1,055	\$	959	\$	1,021	\$ 872
Auto Expense	\$	4,322	\$	8,749			\$ 12,597
Contract Labor	\$	1,300	\$	28,975	\$	45,824	
Interest Expense	\$	1,749					
Insurance	\$	1,224					
Legal Fees	\$	254			\$	3,000	
Loan Fees	\$	6,379					
Miscellaneous			\$	6,609			
Payroll	\$	12,000	\$	10,000	\$	25,650	\$ 30,200
Rent	\$	4,139	\$	4,080	\$	12,848	
Repairs	\$	1,896			\$	4,000	
Supplies	\$	1,200					
Taxes & Licenses	\$	1,091	\$	849	\$	2,138	\$ 2,880
Telephone	\$	2,412	\$	1,704			
Tools							\$ 1,575
Travel	\$	700	\$	2,500	\$	5,012	\$ 11,951
Uniforms							\$ 600
Utilities	\$	2,088	\$	1,470			
Total	\$	41,808	\$	65,895	\$	99,493	\$ 60,675
Depreciation	\$	2,301	\$	2,254	\$	2,841	\$ 1,697
Net Income	\$	(12,177)	\$	183	\$	4,767	\$ (510)

(See Accountants Compilation Report)

Form **1120S**Department of the Treasury
Internal Revenue Service**U.S. Income Tax Return for an S Corporation**Do not file this form unless the corporation has filed or is
attaching Form 2553 to elect to be an S corporation.Information about Form 1120S and its separate instructions is at www.irs.gov/form1120s.

OMB No. 1545-0123

2015

For calendar year 2015 or tax year beginning , 2015, ending

A Selection effective date 01/03/11	TYPE OR PRINT	Name Richardson Chop Shop, LLC	D Employer identification number 27-4432071
B Business activity code number (see instrs) 441300		Number, street, and room or suite no. If a P.O. box, see instructions. P O Box 1501	E Date incorporated 01/03/11
C Check if Schedule M-3 attached <input type="checkbox"/>		City or town, state or province, country, and ZIP or foreign postal code Lockhart TX 78644	F Total assets (see instructions) \$ 28,750.

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If 'Yes,' attach Form 2553 if not already filed**H** Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocation**I** Enter the number of shareholders who were shareholders during any part of the tax year 1**Caution.** Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1 a Gross receipts or sales	1 a 144,792.	
	b Returns and allowances	1 b 0.	
	c Balance. Subtract line 1b from line 1a		1 c 144,792.
	2 Cost of goods sold (attach Form 1125-A)		2 76,460.
	3 Gross profit. Subtract line 2 from line 1c		3 68,332.
	4 Net gain (loss) from Form 4797, line 17 (attach Form 4797)		4
DEDUCTIONS SEE INSTRS	5 Other income (loss) (see instrs — att statement)		5
	6 Total income (loss). Add lines 3 through 5.		6 68,332.
	7 Compensation of officers (see instructions - attach Form 1125-E)		7 10,000.
	8 Salaries and wages (less employment credits)		8
	9 Repairs and maintenance		9
	10 Bad debts		10
	11 Rents		11 4,080.
	12 Taxes and licenses		12 849.
	13 Interest		13
	14 Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)		14 2,254.
	15 Depletion (Do not deduct oil and gas depletion.)		15
	16 Advertising		16
	17 Pension, profit-sharing, etc, plans		17
	18 Employee benefit programs		18
	19 Other deductions (attach statement) STMT		19 50,966.
	20 Total deductions. Add lines 7 through 19		20 68,149.
	21 Ordinary business income (loss). Subtract line 20 from line 6		21 183.
TAX AND PAYMENTS	22 a Excess net passive income or LIFO recapture tax (see instructions)	22 a	
	b Tax from Schedule D (Form 1120S)	22 b	
	c Add lines 22a and 22b (see instructions for additional taxes)		22 c
	23 a 2015 estimated tax payments and 2014 overpayment credited to 2015	23 a	
	b Tax deposited with Form 7004	23 b 0.	
	c Credit for federal tax paid on fuels (attach Form 4136)	23 c	
	d Add lines 23a through 23c		23 d 0.
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached <input type="checkbox"/>		24
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed		25 0.
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid		26
27 Enter amount from line 26 Credited to 2016 estimated tax		27	

**Sign
Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer	Date	Title	May the IRS discuss this return with the preparer shown below (see instructions)?
		LLC Manager	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Paid
Preparer
Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input checked="" type="checkbox"/> if self-employed	PTIN
Kevin Mills		01/10/17		P00274659
Firm's name	Firm's EIN		Phone no.	
Kevin Mills, CPA	75-2991066		(512) 376-4212	
Firm's address	TX 78644			
1015 West San Antonio St, Suite A				
Lockhart				

BAA For Paperwork Reduction Act Notice, see separate instructions.

SPSA0112 08/13/15

Form 1120S (2015)

Faulkenberry 000578

Form 1120S (2015) Richardson Chop Shop, LLC

27-4432071

Page 2

Schedule B Other Information (see instructions)

					Yes	No
1 Check accounting method: a <input checked="" type="checkbox"/> Cash b <input type="checkbox"/> Accrual c <input type="checkbox"/> Other (specify) ▶ _____						
2 See the instructions and enter the:						
a Business activity. ▶ <u>Online Retail</u> b Product or service. ▶ <u>Motorcycle Parts</u>						
3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation						X
4 At the end of the tax year, did the corporation:						
a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below.						X
(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made		
b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below.						X
(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum % Owned in Profit, Loss, or Capital		
5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock?						X
If "Yes," complete lines (i) and (ii) below.						
(i) Total shares of restricted stock ▶						
(ii) Total shares of non-restricted stock ▶						
b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments?						X
If "Yes," complete lines (i) and (ii) below.						
(i) Total shares of stock outstanding at the end of the tax year ▶						
(ii) Total shares of stock outstanding if all instruments were executed ▶						
6 Has this corporation filed, or is it required to file, Form 8918 , Material Advisor Disclosure Statement, to provide information on any reportable transaction?						X
7 Check this box if the corporation issued publicly offered debt instruments with original issue discount <input type="checkbox"/> If checked, the corporation may have to file Form 8281 , Information Return for Publicly Offered Original Issue Discount Instruments.						
8 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ▶ \$ _____						
9 Enter the accumulated earnings and profits of the corporation at the end of the tax year. \$ _____						
10 Does the corporation satisfy both of the following conditions?						
a The corporation's total receipts (see instructions) for the tax year were less than \$250,000					X	
b The corporation's total assets at the end of the tax year were less than \$250,000						
If "Yes," the corporation is not required to complete Schedules L and M-1.						
11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?						X
If "Yes," enter the amount of principal reduction \$ _____						
12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions						X
13 a Did the corporation make any payments in 2015 that would require it to file Form(s) 1099?					X	
b If "Yes," did the corporation file or will it file required Forms 1099?					X	

Form 1120S (2015)

Form **1120S**Department of the Treasury
Internal Revenue Service**U.S. Income Tax Return for an S Corporation**

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.

▶ Information about Form 1120S and its separate instructions is at www.irs.gov/form1120s.

OMB No. 1545-0123

2014

For calendar year 2014 or tax year beginning , 2014, ending

A S election effective date 01/03/11	TYPE OR PRINT	Name Richardson Chop Shop, LLC	D Employer identification number 27-4432071
B Business activity code number (see instrs) 441300		Number, street, and room or suite no. If a P.O. box, see instructions. P O Box 1501	E Date incorporated 01/03/11
C Check if Schedule M-3 attached <input type="checkbox"/>		City or town, state or province, country, and ZIP or foreign postal code Lockhart TX 78644	F Total assets (see instructions) \$ 40,400.

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If 'Yes,' attach Form 2553 if not already filed**H** Check if: (1) ☐ Final return (2) ☐ Name change (3) ☐ Address change
(4) ☐ Amended return (5) ☐ S election termination or revocation**I** Enter the number of shareholders who were shareholders during any part of the tax year ▶ 2**Caution.** Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1 a Gross receipts or sales	1 a	179,819.	
	b Returns and allowances	1 b	8,829.	
	c Balance. Subtract line 1b from line 1a	1 c		170,990.
	2 Cost of goods sold (attach Form 1125-A)	2		63,889.
	3 Gross profit. Subtract line 2 from line 1c	3		107,101.
	4 Net gain (loss) from Form 4797, line 17 (attach Form 4797)	4		
DEDUCTIONS SEE INSTRS	5 Other income (loss) (see instrs — att statement)	5		
	6 Total income (loss). Add lines 3 through 5. ▶	6		107,101.
	7 Compensation of officers (see instructions - attach Form 1125-E)	7		25,650.
	8 Salaries and wages (less employment credits)	8		
	9 Repairs and maintenance	9		4,000.
	10 Bad debts	10		
	11 Rents	11		12,848.
	12 Taxes and licenses	12		2,138.
	13 Interest	13		
	14 Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	14		2,841.
	15 Depletion (Do not deduct oil and gas depletion.)	15		
TAX AND PAYMENTS	16 Advertising	16		
	17 Pension, profit-sharing, etc, plans	17		
	18 Employee benefit programs	18		
	19 Other deductions (attach statement) STMT	19		54,857.
	20 Total deductions. Add lines 7 through 19 ▶	20		102,334.
	21 Ordinary business income (loss). Subtract line 20 from line 6	21		4,767.
	22 a Excess net passive income or LIFO recapture tax (see instructions)	22 a		
	b Tax from Schedule D (Form 1120S)	22 b		
	c Add lines 22a and 22b (see instructions for additional taxes)	22 c		
	23 a 2014 estimated tax payments and 2013 overpayment credited to 2014	23 a		
b Tax deposited with Form 7004	23 b	0.		
c Credit for federal tax paid on fuels (attach Form 4136)	23 c			
d Add lines 23a through 23c	23 d		0.	
24 Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ <input type="checkbox"/>	24			
25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed	25		0.	
26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid	26			
27 Enter amount from line 26 Credited to 2015 estimated tax ▶	27			

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		May the IRS discuss this return with the preparer shown below (see instructions)? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Signature of officer _____ Date	LLC Manager _____ Title	
Paid Preparer Use Only	Print/Type preparer's name Kevin Mills CPA	Preparer's signature _____ Date 01/10/17	Check <input checked="" type="checkbox"/> if self-employed PTIN P00274659
	Firm's name ▶ Kevin Mills, CPA	Firm's EIN ▶ 75-2991066	
	Firm's address ▶ 1015 West San Antonio St, Suite A Lockhart TX 78644	Phone no.	

BAA For Paperwork Reduction Act Notice, see separate instructions.

SPSA0112 08/06/14

Form 1120S (2014)

Faulkenberry 000581

Form 1120S (2014) Richardson Chop Shop, LLC

27-4432071

Page 2

Schedule B Other Information (see instructions)

					Yes	No
1 Check accounting method: a <input checked="" type="checkbox"/> Cash b <input type="checkbox"/> Accrual c <input type="checkbox"/> Other (specify) ▶ _____						
2 See the instructions and enter the:						
a Business activity. ▶ <u>Online Retail</u> b Product or service. ▶ <u>Motorcycle Parts</u>						
3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation						X
4 At the end of the tax year, did the corporation:						
a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below						X
(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made		
b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below						X
(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum % Owned in Profit, Loss, or Capital		
5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock?						X
If "Yes," complete lines (i) and (ii) below.						
(i) Total shares of restricted stock ▶ _____						
(ii) Total shares of non-restricted stock ▶ _____						
b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments?						X
If "Yes," complete lines (i) and (ii) below.						
(i) Total shares of stock outstanding at the end of the tax year ▶ _____						
(ii) Total shares of stock outstanding if all instruments were executed ▶ _____						
6 Has this corporation filed, or is it required to file, Form 8918 , Material Advisor Disclosure Statement, to provide information on any reportable transaction?						X
7 Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ <input type="checkbox"/> If checked, the corporation may have to file Form 8281 , Information Return for Publicly Offered Original Issue Discount Instruments.						
8 If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to the basis of the asset (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years (see instructions) ▶ \$ _____						
9 Enter the accumulated earnings and profits of the corporation at the end of the tax year. \$ _____						
10 Does the corporation satisfy both of the following conditions?						
a The corporation's total receipts (see instructions) for the tax year were less than \$250,000						
b The corporation's total assets at the end of the tax year were less than \$250,000					X	
If "Yes," the corporation is not required to complete Schedules L and M-1.						
11 During the tax year, did the corporation have any non-shareholder debt that was canceled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?						X
If "Yes," enter the amount of principal reduction \$ _____						
12 During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions						X
13 a Did the corporation make any payments in 2014 that would require it to file Form(s) 1099?					X	
b If "Yes," did the corporation file or will it file required Forms 1099?					X	

Form 1120S (2014)

Other Deductions Worksheet

► Keep for your records

2014

[illegible]

Form **1120S****U.S. Income Tax Return for an S Corporation**

OMB No. 1545-0130

Department of the Treasury
Internal Revenue Service

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
▶ Information about Form 1120S and its separate instructions is at www.irs.gov/form1120s.

2013

For calendar year 2013 or tax year beginning , 2013, ending

A S election effective date 01/03/11	TYPE OR PRINT	Name Richardson Chop Shop, LLC	D Employer identification number 27-4432071
B Business activity code number (see instrs) 441300		Number, street, and room or suite no. If a P.O. box, see instructions. P O Box 1501	E Date incorporated 01/03/11
C Check if Schedule M-3 attached <input type="checkbox"/>		City or town, state or province, country, and ZIP or foreign postal code Lockhart TX 78644	F Total assets (see instructions) \$ 38,933.
G Is the corporation electing to be an S corporation beginning with this tax year? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If 'Yes,' attach Form 2553 if not already filed			
H Check if: (1) <input type="checkbox"/> Final return (2) <input type="checkbox"/> Name change (3) <input type="checkbox"/> Address change (4) <input type="checkbox"/> Amended return (5) <input type="checkbox"/> S election termination or revocation			

I Enter the number of shareholders who were shareholders during any part of the tax year 2**Caution.** Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

INCOME	1 a Gross receipts or sales	1 a	195,809.	
	b Returns and allowances	1 b	9,545.	
	c Balance. Subtract line 1b from line 1a	1 c		186,264.
	2 Cost of goods sold (attach Form 1125-A)	2		124,402.
	3 Gross profit. Subtract line 2 from line 1c	3		61,862.
	4 Net gain (loss) from Form 4797, line 17 (attach Form 4797)	4		
DEDUCTIONS SEE INSTRS	5 Other income (loss) (see instrs — att statement)	5		
	6 Total income (loss). Add lines 3 through 5.	6		61,862.
	7 Compensation of officers (see instructions - attach Form 1125-E)	7		30,200.
	8 Salaries and wages (less employment credits)	8		
	9 Repairs and maintenance	9		
	10 Bad debts	10		
	11 Rents	11		
	12 Taxes and licenses	12		2,880.
	13 Interest	13		
	14 Depreciation not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	14		1,697.
	15 Depletion (Do not deduct oil and gas depletion.)	15		
	16 Advertising	16		
	17 Pension, profit-sharing, etc, plans	17		
	18 Employee benefit programs	18		
	19 Other deductions (attach statement)	19		27,595.
20 Total deductions. Add lines 7 through 19	20		62,372.	
21 Ordinary business income (loss). Subtract line 20 from line 6	21		-510.	
TAX AND PAYMENTS	22 a Excess net passive income or LIFO recapture tax (see instructions)	22 a		
	b Tax from Schedule D (Form 1120S)	22 b		
	c Add lines 22a and 22b (see instructions for additional taxes)	22 c		
	23 a 2013 estimated tax payments and 2012 overpayment credited to 2013	23 a		
	b Tax deposited with Form 7004	23 b	0.	
	c Credit for federal tax paid on fuels (attach Form 4136)	23 c		
	d Add lines 23a through 23c	23 d		0.
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached	24		
	25 Amount owed. If line 23d is smaller than the total of lines 22c and 24, enter amount owed	25		0.
	26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid	26		
27 Enter amount from line 26 Credited to 2014 estimated tax	27			

**Sign
Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer	Date	LLC Manager	May the IRS discuss this return with the preparer shown below (see instructions)? <input type="checkbox"/> Yes <input type="checkbox"/> No
----------------------	------	-------------	--

**Paid
Preparer
Use Only**

Print/Type preparer's name Kevin Mills CPA	Preparer's signature	Date	Check <input checked="" type="checkbox"/> if self-employed	PTIN P00274659
Firm's name Kevin Mills, CPA	Firm's EIN 75-2991066	Phone no.		
Firm's address 1015 West San Antonio St, Suite A Lockhart TX 78644				

BAA For Paperwork Reduction Act Notice, see separate instructions.

SPSA0112 01/15/14

Form 1120S (2013)

Faulkenberry 000584

Form 1120S (2013) Richardson Chop Shop, LLC

27-4432071

Page 2

Schedule E Other Information (see instructions)

					Yes	No
1 Check accounting method: a <input checked="" type="checkbox"/> Cash b <input type="checkbox"/> Accrual c <input type="checkbox"/> Other (specify) ▶ _____						
2 See the instructions and enter the:						
a Business activity. ▶ <u>Online Retail</u> b Product or service. ▶ <u>Motorcycle Parts</u>						
3 At any time during the tax year, was any shareholder of the corporation a disregarded entity, a trust, an estate, or a nominee or similar person? If "Yes," attach Schedule B-1, Information on Certain Shareholders of an S Corporation						X
4a At the end of the tax year, did the corporation: Own directly 20% or more, or own, directly or indirectly, 50% or more of the total stock issued and outstanding of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below.						X
(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage of Stock Owned	(v) If Percentage in (iv) is 100%, Enter the Date (if any) a Qualified Subchapter S Subsidiary Election Was Made		
b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below						X
(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum % Owned in Profit, Loss, or Capital		
5a At the end of the tax year, did the corporation have any outstanding shares of restricted stock?						X
If "Yes," complete lines (i) and (ii) below.						
(i) Total shares of restricted stock ▶ _____						
(ii) Total shares of non-restricted stock ▶ _____						
b At the end of the tax year, did the corporation have any outstanding stock options, warrants, or similar instruments?						X
If "Yes," complete lines (i) and (ii) below.						
(i) Total shares of stock outstanding at the end of the tax year ▶ _____						
(ii) Total shares of stock outstanding if all instruments were executed ▶ _____						
6 Has this corporation filed, or is it required to file, Form 8918 , Material Advisor Disclosure Statement, to provide information on any reportable transaction?						X
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b If "Yes," did the corporation file or will it file required Forms 1099?					X	

Form 1120S (2013)

Kevin Mills, CPA
1015 West Antonio St, Ste A
Lockhart, TX 78644

Professional Experience:

Bachelors in Business Administration at Southwest Texas State University 12/90.
Certified Public Accountant 2/12/2001.

I opened my office part-time in Lockhart in 2002 and full-time in 2008.

1990-1997 I worked at the Resolution Trust Corporation, State of Texas an Ontra Inc.

1997-2007 I worked in industry as a Systems Analyst on Oracle and Peoplesoft software at Legerity and Whole Foods Market.

Tax Practice:

I prepare over 500 individual income tax returns and over 110 Corporate, Partnership, Estate and Non-Profit tax returns.

Software:

Certified QuickBooks Pro Advisor

Accounting:

- Sales Tax Returns
- Payroll Processing
- Controllershship services
- Compilation of Financial Statements
- Business Formation Services

Boards Served on:

Bomber Fastpitch Inc.- Youth Athletic Organization for Girls Fastpitch Softball
4the Heroes- Military Support and Recognition



Texas State Board of Public Accountancy
William Treacy, Executive Director

Office - KEVIN MILLS, CPA

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Firm License ID

T07024

Firm name

KEVIN MILLS, CPA

Resident manager

Mr. MILLS

Contact Information (most recent)

1015 WEST SAN ANTONIO ST STE A

LOCKHART TX 78644

Phone: (512)376-4212

Fax: (512)376-2926

Email: kevin@kevinmillscpa.com

Texas County

CALDWELL

Date registered

03/28/2002

License expiration date

03/31/2017

Status

Issued (Current)

History of disciplinary actions

NO DISCIPLINARY HISTORY

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Texas State Board of Public Accountancy

William Treacy, Executive Director

Individual Licensee - MILLS, KEVIN D

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Certificate last name

MILLS

Contact Information (most recent)

1015 W SAN ANTONIO ST STE A
LOCKHART TX 78644

Date certified/registered

02/12/2001

License expiration date

09/30/2017

Status

Issued (Current)

Employment areas most recently reported

Full time

SOLE PROPRIETOR - IN TEXAS

Part time

NONE REPORTED

Firms in which the individual is a partner, shareholder, owner, officer, director, or resident manager

Association with the firm KEVIN MILLS, CPA (License ID = T07024) began on 02/01/2002.

History of Board actions

NO DISCIPLINARY HISTORY

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